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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning the business of
Automobile Insurance
in Canada

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DEPARTMENT OF JUSTICE
OTTAWA

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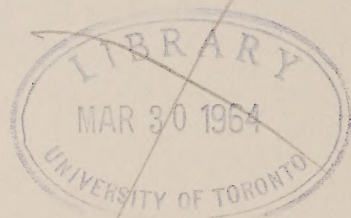
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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE BUSINESS OF
AUTOMOBILE INSURANCE
IN CANADA

COMBINES INVESTIGATION ACT

Ottawa
1960

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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Pierre Carignan, Q.C., M.A., LL.L.	A. S. Whiteley, B.A., M.A.
Member	Member

RESTRICTIVE TRADE PRACTICES COMMISSION
OTTAWA

May 16, 1960.

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to present to you the report of the Restrictive Trade Practices Commission arising out of a general inquiry made by the Director of Investigation and Research under Section 42 of the Combines Investigation Act into the business of automobile insurance,

The inquiry was conducted by the Director of Investigation and Research over a period of several years. A Statement of the information and material obtained during the course of the inquiry was compiled in book form and presented to the Commission by the Director on April 21, 1958.

Copies of the Statement prepared by the Director were sent by the Commission to the Superintendent of Insurance for Canada and the Superintendents of Insurance for the several provinces, also to organizations of automobile insurance companies and automobile insurance agents. In addition copies were sent to a number of automobile insurance companies that were not represented by any organization and to a number of member companies of the various organizations. Further copies were sent to national and provincial automobile associations and clubs, the Canadian Trucking Association, the Canadian Manufacturers' Association and the Canadian Chamber of Commerce, and upon request, to a number of individuals who were directly concerned in the business of automobile insurance.

All those to whom copies of the Statement were sent were invited to make comments thereon and to supply additional information relative to the subject matter of the inquiry.

A number of written briefs were submitted to the Commission and at the request of interested groups a hearing was held by the Commission, in the City of Ottawa, from April 27th to 30th, 1959, both inclusive.

The Commission is indebted to the organizations of companies and agents and to their counsel, all of whom co-operated fully with the Commission in the completion of the Inquiry and the conduct of the hearing.

As Mr. Pierre Carignan, Q.C., was not appointed to the Commission until after the date of the hearing he has taken no part in the preparation of this report.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

PURPOSE, SCOPE AND HISTORY OF THE INQUIRY

1. Reference to the Commission

This inquiry was brought before the Commission by the Director of Investigation and Research, pursuant to section 42 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, the terms of which are as follows:

"42. (1) The Director upon his own initiative may and upon direction from the Minister or at the instance of the Commission shall carry out an inquiry concerning the existence and effect of conditions or practices having relation to any commodity which may be the subject of trade or commerce and which conditions or practices are related to monopolistic situations or restraint of trade, and for the purposes of this Act any such inquiry shall be deemed to be an inquiry under section 8.

(2) It is the duty of the Commission to consider any evidence or material brought before it under subsection (1) together with such further evidence or material as the Commission considers advisable and to report thereon in writing to the Minister, and for the purposes of this Act any such report shall be deemed to be a report under section 19, 1952, c. 39, s. 9."

The Director submitted to the Restrictive Trade Practices Commission, on April 16, 1958, a Statement relating to the business of automobile insurance.

2. Background of the Inquiry

"From time to time complaints have come to the attention of the Director under the Combines Investigation Act regarding various joint activities of companies

selling automobile insurance in Canada. They have related principally to the fixing of premium rates and agents' commissions.

In particular, complaints were made to the Director on behalf of organizations of insurance agents arising out of an application made several years ago to the Secretary of State for incorporation of Western Canada Insurance Underwriters' Association and British Columbia Underwriters' Association under the Dominion Companies Act. As a result of such complaints, the Commissioner of the Combines Investigation Act made representations to the Secretary of State pointing out several respects in which the objects of the incorporations being sought might come into conflict with the anti-combines legislation. Letters Patent for the incorporation of these organizations were not granted. Complaints have, from time to time in the interim, been received through Counsel on behalf of Agents' organizations directed against the establishment of uniform commission rates and restrictions on agents' operation by organizations of automobile insurance companies.

As a result of these complaints, the Combines Branch commenced several years ago to gather information relating to the business of automobile insurance and such information forms the basis of this Statement."

(Statement, p. 1)

The Statement contains a great deal of factual information about the automobile insurance business. With few exceptions the accuracy of this information was not disputed by anyone who made representations to the Commission or who appeared at the hearing. The Commission has therefore relied upon such information as being, in general, factually correct. On the other hand, as will appear, objection was taken to the Director's interpretation of and inferences from some of the facts stated, as well as to his conclusions concerning possible infringement of the law and possible public detriment.

3. Purpose of the Inquiry

The purpose of the inquiry is stated in the Director's Statement:

"Certain aspects of automobile insurance are regulated by the Federal and Provincial Governments. With such aspects the anti-combines legislation has no concern. It was

considered desirable, however, to examine the field, by way of a general inquiry under section 42 of the Combines Investigation Act, for the purpose of determining whether there were aspects, not covered by Federal or Provincial legislation, in respect of which the companies were engaging in practices which might lead to question under the Act. An inquiry under section 42 is not directed to the investigation of a specific suspected offence against the Act. It is directed, rather, to a general examination of restrictive practices which may raise a question of the public interest, whether or not such practices involve contraventions. It was considered that such an inquiry would serve two principal ends. First, by disclosing any practices that may be questionable under the Act, it would give the companies an opportunity to review their policies in respect of such practices. Second, if it appeared that any such practices would be, if subject to public control, desirable, it would give the companies an opportunity to seek legislative sanction, accompanied by appropriate safeguards, therefor. In brief, then, this inquiry is concerned with those aspects of the industry which are not covered by Federal or Provincial legislation."

(Statement, pp. 1-2)

4. Collection of Information by the Director of Investigation and Research

As part of the inquiry conducted by the Director several questionnaires were sent out from the Director's office to secure information on automobile insurance. One questionnaire was sent to each company shown by the reports of the Federal and Provincial Superintendents of Insurance as writing automobile insurance in Canada. Other questionnaires were sent to each of the Underwriting Associations, Conferences or Federations whose members were engaged in writing automobile insurance. Later a questionnaire was sent to each of the various associations of insurance agents throughout Canada.

5. Steps Taken by the Restrictive Trade Practices Commission

On May 16, 1958, the Restrictive Trade Practices Commission wrote to each of the Underwriting Associations, Conferences and Federations from which information had been

obtained by the Director, enclosing a copy of the Statement on the business of automobile insurance and stating that it was now the function of the Commission to consider this Statement, together with such other evidence and material as it might obtain, and report thereon to the Minister of Justice.

In its letter the Commission stated that it thought the organization or its members might desire to make representations covering the subject matter of the inquiry and to offer reasoned comments upon the Director's conclusions. The organizations were invited to make their representations to the Commission in the form of written briefs. Subsequently a copy of the Statement and a similar invitation were sent to a number of insurance companies that were not represented by any organization and also to a number of member companies of the various organizations.

Similarly, copies of the Statement and invitations to make representations were sent to the various organizations of insurance agents across Canada.

The Commission also sent copies of the Statement to the Federal and Provincial Superintendents of Insurance and stated that it would welcome any comments or additional information relevant to the subject matter of the inquiry.

Copies of the Statement were sent by the Commission to national and provincial automobile associations and clubs, to the Canadian Trucking Association, the Canadian Manufacturers' Association and to the Canadian Chamber of Commerce, and these organizations were invited to comment on the subject matter of the inquiry.

The Commission received a number of unsolicited requests for copies of the Statement on the business of automobile insurance and copies were supplied to those who were directly concerned in the business of automobile insurance. In all, 285 copies of the Statement were distributed by the Commission.

In response to the Commission's invitation a number of organizations indicated their desire to make representations on the Statement submitted by the Director but considerable time was required by some organizations for the preparation of their submissions and the last of these was not received by the Commission until February, 1959.

Although the Commission had invited written submissions from interested parties, the request was made by some parties for an oral hearing in addition to the written representations and some other parties requested that the brief submitted by one group

should be made available to all other parties. Accordingly, the Commission arranged for a hearing to be held in Ottawa beginning on April 27, 1959 and in advance of the date of the hearing the Commission furnished each party submitting a brief a copy of each of the briefs received by the Commission from other parties. The briefs so exchanged had been submitted by the following:

Canadian Underwriters' Association
Independent Automobile and Casualty Insurance Conference
Insurance Agents' Association of British Columbia
Nova Scotia Fire and Casualty Agents' Association
Nova Scotia Provincial General Insurance Agents Association
Royal Insurance Company Limited and Associated Companies
Toronto Insurance Conference
Winnipeg Conference of Insurance Agents.

The hearing was held before the Commission in the Exchequer Court, Ottawa, on April 27th, 28th, 29th and 30th, 1959. The following appearances were made:

J. J. Quinlan	Representing the Director of Investigation and Research
Cuthbert Scott, Q.C.	Representing the Toronto Insurance Conference; Winnipeg Insurance Conference; British Columbia Agents Association; and having a watching brief for the Canadian Federation of Insurance Agents
Hazen Hansard, Q.C. D. K. MacTavish, Q.C. Leslie Ham	Representing Canadian Under- writers' Association
R. F. Wilson, Q.C.	Representing Independent Automobile and Casualty Insurance Conference; Western Canada Independent Automobile Insurance Conference; Independent Auto- mobile Insurance Conference of British Columbia
Charles B. Robison	Representing State Farm Mutual Automobile Insurance Company

At the hearing evidence was adduced by counsel from the following witnesses:

J. Mylrea	Principal partner, Reed, Shaw and McNaught, 25 Adelaide Street West, Toronto, Ontario.
E. C. Ryan	Ryan Agency Ltd., 296 Garry Street, Winnipeg, Man., Past President, Insurance Agents' Association of Winnipeg.
W. E. S. Tomenson	Tomenson, Saunders, Smith and Garfat, Ltd., Toronto, Ontario. Past President, Toronto Insurance Conference.
F. B. Brisco	Smalley, Brisco and Thompson Limited, Chatham, Ontario. Vice-President, Ontario Insurance Agents' Association.
H. McD. Martin	Abernethy Insurance Associates Limited, Vancouver, B.C. Past President, Vancouver Insurance Agents' Association.
S. Leipsic	Insurance Manager, Aronovitch and Leipsic Limited, Winnipeg, Man. Past President, Insurance Agents' Association of Winnipeg.
C.A. Baines	Assistant Manager for Canada, Zurich Insurance Company, Toronto, Ontario. President, Independent Automobile and Casualty Insurance Conference.

During the course of the hearing some ten exhibits, numbered H-1 to H-10 inclusive, were filed with the Commission.

In this report, for convenience of reference, exhibits will be referred to by letter and number. Reference to the transcript of the oral testimony given at the hearing before the Commission will be as follows (Hearing, p. . . .). The Statement submitted to the Commission by the Director will be referred to as the Director's Statement and quotations from it will be cited as follows (Statement, p. . . .).

6. Positions Taken by the Parties with Respect to the
Propriety or Legality of the Inquiry and
Its Conduct

The position taken by the Canadian Underwriters' Association, (C.U.A.) both in the brief submitted to the Commission and at the hearing, was that the inquiry as a whole and the hearing by the Commission were not within the jurisdiction of the Director of Investigation and Research or of the Restrictive Trade Practices Commission. The arguments advanced in support of this position may be outlined as follows:

1. While section 42 of the Combines Investigation Act empowers the Director to carry out upon his own initiative, or upon direction from the Minister, or at the instance of the Commission, an inquiry of the type described by section 42, it does not empower the Director to launch an inquiry upon the basis of the sort of informal complaints which are mentioned in the opening paragraphs of the Director's Statement. These informal complaints are not complaints under sections 7 and 8 of the Act, and for that reason the inquiry is beyond the power of the Director.

2. Section 42 of the Act empowers the Director to carry out an inquiry concerning the existence and effect of conditions and practices having relation to a commodity which may be the subject of trade or commerce. Insurance, however, is not a commodity and there is no commodity of any kind whatever involved in the business of automobile insurance. The argument that the commodity with which the inquiry is concerned is automobiles is a false argument. Insurance is a contract of indemnity, dealing with intangibles, with rights created by agreement. Because insurance is not a commodity, the Director has no jurisdiction under section 42.

3. The conditions and practices, the existence and effect of which the Director is empowered to investigate under section 42 of the Act must be related to monopolistic situations or restraint of trade. Automobile insurance, which consists of contracts creating rights of indemnity, cannot be monopolized, and because this is so, the Director has no jurisdiction to carry on this inquiry. Again, as automobile insurance is not a commodity, it cannot be bought and sold, and for that reason there is no trade to be restrained. Therefore this inquiry is beyond the Director's jurisdiction.

4. If these proceedings are not sanctioned by law, and if what appears in some of the opposing briefs amounts to libel, it is possible that the Minister, if he made public a report in which some of the libellous material were included, would not be privileged and might be liable for legal action on the ground of libel along with the

persons presenting the briefs. While it is not libellous to speak of combinations (as was done in the Masten and Hodgins reports) it is libellous to refer to a group as a combine.

5. As there is no Statement of Evidence (only a "Statement") and because there are no allegations, there is no order of procedure. Hearings in the sense of section 18 of the Act are not contemplated under section 42, and that is why there is no order of procedure. Neither can the inquiry be brought under sections 8-18 of the Act: for the root of these sections is that the Director must make allegations and there are none in the Director's Statement.

6. The inquiry cannot be brought under section 411 of the Criminal Code except in respect of the price of insurance (subsection (1)(d) of section 411). This section is not concerned with the preservation of competition in general. As it is criminal law, it must be interpreted restrictively, and as far as insurance is concerned, it is limited to price. There is no jurisdiction under section 411 for an inquiry into any other aspect of insurance.

7. The major part of automobile insurance, public liability and property damage, ". . . is not insurance upon persons or property at all. On the contrary, it is indemnity insurance against possible liability for damages".

8. The anti-combines legislation does not extend to the employer-agent relationship.

9. There is no conspiracy because the rates arrived at by the C.U.A. are presented to the provincial superintendents of insurance as well as to the Superintendent of the Federal Department of Insurance.

10. Even if the inquiry were to be brought under section 18 of the Combines Investigation Act, it would be necessary to show that it is related to a commodity. As insurance is not a commodity, this cannot be done and therefore there is no jurisdiction.

11. The representatives of the insurance agents' associations have no right to appear before the Commission to make allegations or to support them, for the making of allegations is the duty of the Director. If private individuals wish to make allegations or provoke proceedings under the Combines Investigation Act, the procedure is indicated in sections 7 and 8 of the Act, which do not entitle them to become private prosecutors, but only set the Director in motion. Furthermore, the agents' associations in appearing before the Commission are not within the Combines Act or the companion sections of the Criminal Code because there is no commodity involved. What insurance agents perform is a service,

but the anti-combines laws do not deal with services.

12. This inquiry should be held privately, for under section 28 of the Combines Investigation Act all hearings held under the Act must be held in private unless the Chairman rules otherwise. Because the law which the Commission is administering is of a criminal type, and there are overtones of allegation and crime, it is highly desirable for the protection of those whose business is being investigated, that the matter should not be made public until the Commission has made a report and the Minister has made the report public.

13. Section 42 of the Act, under which section the inquiry was held, is itself ultra vires of the Parliament of Canada for it is not criminal law or law designed for the detection or prevention of crime.

14. Finally, insurance falls into the category of property and civil rights, which category has been expressly reserved to the provinces under the British North America Act. Judicial decisions have defined an unhampered and unqualified jurisdiction to regulate all aspects of insurance within the provinces. As a result, the Federal Government has restricted itself to licensing with respect to solvency.

In opposition to the above, arguments supporting the validity of the inquiry were put forward by counsel for several associations of insurance agents, and by counsel representing the Director of Investigation and Research under the Combines Investigation Act. These are summarized below, the paragraph numbers corresponding in most cases to the numbers given in the summary of the arguments on behalf of the Canadian Underwriters' Association.

1. Mr. Scott stated that he understood this inquiry had been instigated by the Director upon his own initiative. The Director is clearly empowered by the Act to make an investigation upon his own initiative.

2. Mr. Scott argued that insurance, and particularly automobile insurance, is a commodity because "commodity" when used in the singular has a very broad meaning, broad enough to include insurance. The singular was deliberately chosen by Parliament to make inquiries of this kind as broad as possible. Insurance is a commodity, namely, protection. Whether this commodity is a subject of trade and commerce is immaterial, for the section says "which may be the subject of trade or commerce." Thus there is an alternative. If Parliament intended that the article should be an article of trade or commerce it would have said "which is a matter of trade or commerce".

Mr. Quinlan, on behalf of the Director, argued that the inquiry is within the jurisdiction of the Commission under section 42 because the conditions and practices of concern are related to a commodity, namely, automobiles. One need not be concerned with whether insurance itself is a commodity. Automobile insurance provides for indemnification for loss or damage to or by an automobile, which is a commodity.

3. Mr. Scott argued that as long as insurance is in any sense a commodity, it is not necessary, in order to establish the Commission's jurisdiction, that an actual monopoly or restraint of trade be established. All that is necessary is that the conditions and practices being inquired into have some relationship to insurance and some relationship to monopolistic situations or restraint of trade.

Mr. Quinlan argued that it is quite possible in the insurance business to have most of the restrictions on competition, such as price-fixing, restriction on entry, boycott, and coercion, which one could have in other business and that therefore insurance could be monopolized.

4. Mr. Scott argued that the Masten Commission of 1919 and the Hodgins Commission of 1930 made reports on the business of automobile insurance in the course of which statements were made to the effect that combinations were in existence. There was never any action for libel against either of the Chairmen of these Commissions. Again, when the Western Canada Insurance Underwriters' Association and the British Columbia Insurance Underwriters' Association applied to the Secretary of State of Canada for incorporation, agents' associations opposed the applications on the grounds that some of the objects of the proposed corporations were contrary to the anti-combines legislation.

5. Mr. Quinlan argued that if Parliament has specific jurisdiction over restrictive practices as indicated in sections 411-412 of the Criminal Code and sections 2, 32 and 34 of the Combines Investigation Act, it would be very difficult to see why it should not have the power to inform itself about such matters in the manner indicated in section 42 of the Combines Act.

6. Mr. Quinlan also said that there are many things which directly or indirectly affect price or can be used to buttress a price agreement and that therefore it is incorrect to say that no other aspect can be considered in an inquiry into insurance under section 411 of the Criminal Code. He argued further that it is clear the courts have said that the anti-combines legislation does prohibit undue or detrimental restraint at large, or obversely, that it protects competition at large.

7. In response to the C.U.A.'s argument that the major part of automobile insurance is not insurance upon persons or property at all, Mr. Quinlan argued that in the various types of insurance related to automobiles, whether public liability, property damage, collision, fire, theft, or comprehensive, it is agreed to indemnify the insured person in respect to damage caused to or by a particular commodity, namely, an automobile.

9. Mr. Scott argued that if the C.U.A., after establishing rates, lays them before the superintendent of insurance, that is a courteous gesture but nothing more. The superintendents of insurance do not either approve or disapprove rates.

11. Mr. Scott argued that he and his clients had the right to appear and be heard because the Commission is empowered by section 42 to gather such further evidence or material as it sees fit. Thus the question of what evidence may be considered is at the discretion of the Commission.

12. Counsel for the Director and the insurance agents' associations submitted that the Commission should admit all interested persons to the hearing so that they would have an opportunity to make such representations as they desired, but neither counsel pressed for a public hearing.

13. and 14. Mr. Scott argued, with regard to the constitutional question, that the inquiry is intra vires because it is well settled in law that Parliament may, under its jurisdiction over criminal law, deal with matters which in their civil aspects are properly within the jurisdiction of the provinces. Thus a transaction valid under provincial law may be an offence under the criminal law. Consequently, if Parliament has the power to declare certain specific acts to be criminal offences, it has the authority to authorize an investigation to ascertain whether such acts have been committed. Thus the Director's investigation and the Commission's hearing are intra vires.

On this issue, Mr. Quinlan's preliminary submission was that constitutional issues are not within the jurisdiction of the Commission; the proper place for settling such issues is the courts.

Having said that, Mr. Quinlan, like Mr. Scott, argued that while the provinces have the power to enact legislation affecting the production and marketing of particular commodities, private arrangements in respect of these commodities are not withdrawn from the application of the anti-combines law. If Parliament has specific jurisdiction over restrictive practices, it has the power to inform itself about such practices, as provided in section 42.

7. Rulings of the Commission with Respect to the
Propriety or Legality of the Inquiry
and Its Conduct

It was the view of the Commission that a commission appointed to administer an act is not the proper body to determine the constitutionality of that act and consequently the Chairman stated that the Commission would not deal with the question which had been raised as to the constitutional basis for the conduct of an inquiry under section 42 of the Act.

On the question of the authority of the Commission to hold a hearing in connection with an inquiry under section 42 and to receive briefs and evidence, the Chairman pointed out that section 42 gives the Commission quite broad powers to proceed with an inquiry. In addition to considering any evidence or material brought before it by the Director, the Commission is authorized to consider such further evidence or material as it considers advisable. There are no limitations placed upon the evidence or material which may be sought or the manner in which the evidence or material may be secured. Thus the holding of a hearing to obtain further evidence or material is within the authority of the Commission.

It was the ruling of the Commission that there is jurisdiction under the Act for the holding of an inquiry under section 42 into the business of automobile insurance. It may be noted that insurance is embraced in the definition of combine in the Act. Section 2(a)(v) defines "combine", the relevant wording being as follows:

"2.(a) 'combine' means a combination having relation to any commodity which may be the subject of trade or commerce, . . . having or designed to have the effect of

. . .

(v) . . . lessening competition in, . . . insurance. . . "

The Act is intended to apply to combinations which would have the effect of preventing or lessening competition in insurance. Section 42 provides that:

"The Director . . . may . . . carry out an inquiry concerning the existence and effect of conditions or practices having relation to any commodity which may be the subject of trade or commerce and which conditions or

practices are related to monopolistic situations or restraint of trade . . . "

Since this language is very broad, it is intended to cover all kinds of conditions or practices which can create monopolistic situations or restraint of trade, and applies to insurance as well as to other matters mentioned in section 2. Therefore, this inquiry may be carried out under section 42. Inquiries under section 42 differ from those under section 18 in that a statement containing allegations is not required. Consequently the absence of allegations as such does not affect the validity of the inquiry.

On the question of whether the hearing should be held in private, the Chairman said that this inquiry is not of the usual type under section 18, where there are specific allegations, and that, therefore, the requirement that proceedings should be conducted in private should be viewed liberally. While he did not think, in view of the representations which had been made that there should be a ruling that the hearing would be open to the general public, he felt that any individuals or organizations who could contribute information relevant to the inquiry should be allowed to be present and to give evidence. The hearing then proceeded on this basis.

CHAPTER II

AUTOMOBILE INSURANCE IN CANADA

1. The Nature of Automobile Insurance

Insurance, other than life insurance, may be defined as a contract whereby one party, called the insurer, or underwriter, undertakes, for a sum of money called a premium, to indemnify the other party, called the insured, against loss or liability from certain risks to which the object of the insurance may be exposed, or from the happening of a certain event.

In particular, automobile insurance is a contract of indemnity (up to the amount stated in the policy) against liability for loss or damage to persons or property caused by an automobile, or the use or operation of an automobile, and against loss of or damage to an automobile. An automobile policy may consist of three sections, one relating to third party liability, one relating to medical payments, and a third relating to loss of or damage to the insured automobile.

In the section relating to third party liability, the insurer agrees to indemnify the insured and every other person who, with the insured's consent, personally drives the automobile, against the liability imposed by law upon the insured or upon such other person for loss or damage arising from the ownership, use, or operation of the automobile, and resulting from bodily injury to or death of any person, or damage to property.

The second section, relating to medical payments, differs from the others in that it is accident insurance rather than indemnity insurance. It is a contract whereby the insurer agrees to pay, for each person who sustains bodily injury caused by an accident while driving, being carried in or upon or entering or alighting from the automobile and resulting from injuries arising from these activities, the expense of any necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services.

The third section relating to loss of or damage to the insured automobile, consists of a contract whereby the insurer agrees to indemnify the insured against direct and accidental loss of or damage to the automobile: (1) caused solely by collision with another object or by upset; (2) arising from any cause other than by collision or upset; (3) caused solely by fire or lightning, or by accident to a conveyance in which the automobile was being transported or, (4) caused solely by theft or attempted theft.

The insurance described above as third party liability insurance is also sometimes known as public liability and property damage insurance.

The insurance described above under the third section is sometimes described as consisting of two types of insurance, the first being called collision insurance, while the second, covering all of the rest of the risks or perils described therein is called comprehensive insurance.

In common usage and in this report the term "automobile insurance" is not restricted in its application to automobiles alone, but is used to refer also to the types of insurance named above when applied to trucks, buses and inter-urban transport as well as to privately-owned passenger automobiles.

2. Types of Organization Selling Automobile Insurance

Insurance in Canada is broadly classified by the Federal Department of Insurance as either casualty, fire, or life. The latter two classifications are self-explanatory, but casualty insurance consists of some 20 to 30 classifications, one of which is automobile insurance. The majority of insurance companies, however, for at least several years, have considered automobile insurance as a separate classification from casualty insurance generally. While a few companies write all classes of insurance, the majority of companies are engaged in the life insurance field or in the automobile, fire, and casualty field, but not in both life insurance and the other groups. Of the companies which are engaged in the automobile, fire, and casualty field, some companies write only automobile or fire or casualty insurance, others write two of these classes, and still others write all three.

The organizations in Canada selling automobile insurance comprise stock companies, mutuals, reciprocals, the Lloyds organization, and the Saskatchewan Government Insurance Office.

A stock company is an ordinary corporation created in the usual way, having shareholders who are the owners of the capital stock of the company, and a board of directors elected by the shareholders. A stock company is in all respects similar to a corporation in any other line of business. Any profits which may arise from the operation of the company's insurance business belong to the company. To the extent that dividends are declared by the directors these profits will be distributed to the shareholders. Similarly, any losses sustained by a stock company as a result of its operations will be borne by the shareholders, either through reduced dividends, or, in extreme cases, through the bankruptcy of the company and the partial or complete loss of the shareholders' equity.

A mutual company is a company whose policyholders take the place of shareholders, there being no shareholders in the ordinary sense of the word. The policyholders elect a board of directors and for this reason may be said to have ultimate control over the company's policy. Profits arising from the operation of a mutual company's business are made available to the policyholders, at least in part, either in the form of dividends on the policies or in the form of reduced premiums for a subsequent year. Any losses sustained in the operation of the mutual's business are similarly borne by the policyholders.

A reciprocal is a group of persons formed for the purpose of exchanging reciprocal contracts of indemnity or inter-insurance with each other through the same attorney. It is an unincorporated organization.

The corporation of Lloyds is a British institution unique in that the corporation as such does not subscribe policies, risks being accepted by individuals, each of whom signs for a specified sum for which he alone is responsible. The liability of each individual is limited only by the total of the sums for which he signs.

The Saskatchewan Government Insurance Office is an organization set up by an Act of the Saskatchewan Legislature in 1944 to do a general insurance business. It commenced business on May 1, 1945. Although the basic principle of the Act is compulsory insurance to secure financial redress to Saskatchewan residents who are injured in motor vehicle accidents and to the dependents of persons killed in such accidents, changes have been made in the plan practically every year, and at the date of this inquiry, it provided public liability, property damage, and comprehensive insurance in addition to the personal injury protection. In addition to the compulsory insurance required by the Act, additional coverage may be obtained from the Office on a voluntary basis.

3. The Agency System

The variation in the type of enterprise engaged in writing automobile insurance is accompanied by variations in the channels through which the business is conducted. A few companies deal directly with insureds and are known as "direct writers". They usually operate through branch offices which may be insurance offices exclusively or may be combined with some other establishment when the insurer is also engaged in other kinds of business. Much of their automobile insurance business may be done on a mail order basis. Thus, "direct writing" companies do not work through independent agents, and the middleman's function, as represented by the independent agent under the agency system, does not exist.

Most insurance companies conduct their business through agents, although some maintain branch offices for supervisory purposes as well.

The agency system of doing business involves the selling of a company's contracts of insurance through agents who are independent business men owning or renting their own premises and managing their businesses independently. They may be engaged solely in the insurance business or they may be engaged in real estate or finance or some other business at the same time. The agent's relationship with the company whose insurance he sells is on the basis of an independent contractor rather than that of an employee. Various provinces require that agents operating in the province be licensed by or hold a certificate of authority from the province. The definition of an agent is substantially similar in most of the provincial Insurance Acts, the following from the Alberta Insurance Act⁽¹⁾ being typical:

" 'agent' means a person who, for compensation, solicits insurance on behalf of any insurer or transmits, for a person other than himself, an application for or a policy of insurance to or from the insurer or offers or assumes to act in the negotiation of insurance or in negotiating its continuance or renewal."

Agents are classified in various ways, such as city agent, local agent, provincial general agent, and supervising general agent.

(1) R.S.A. 1942, C.201 S.2 (3).

By the term supervising general agent is meant an agent whose entire business is derived from sub-agents and brokers, who has entire charge for an insurance company of its business throughout one or more provinces, who maintains a fully equipped and independent insurance office, and who supervises all the company's agents and their business in the prescribed territory. The supervising general agent is not an agent in the sense of one who is directly engaged in securing new business or renewing old business. He is in effect a manager for a company throughout the territory for which he is appointed. He is, however, paid in whole or in part on a commission basis. He is expected to develop the company's business in the territory and to appoint his own local agents.

The provincial general agent resembles the supervising general agent in that he has entire charge for an insurance company of its business throughout one or more provinces, maintains a fully equipped and independent insurance office, and supervises all of the company's agents and their business in the prescribed territory. He appears to differ from the supervising general agent in that, while acting as the manager for a company in the territory for which he is appointed, he also produces new business in the same way as does a local agent. On that part of his work which consists of supervising the work of city and local agents, he is paid by "over-riding commissions". On business which he himself produces he may be paid a commission at the same rate as a local agent, or at a higher rate.

A city agent is one who has been appointed as a city agent by an insurance company. It would appear to be somewhat difficult to distinguish the functions of the city agent from that of the local agent, as within the last 10 years the functions of these two would appear to have become somewhat similar. The evidence shows that the work of a city agent consists in canvassing for business, filling out detailed application forms for individuals and having them signed, submitting the application to the company, and delivering the policy when written to the client. When the client meets with an accident, the city agent notifies the company, sees to it that an adjuster gets to the scene rapidly, and tries to expedite an adequate or amicable adjustment of the loss sustained. The city agent is paid on a commission basis, the commission being calculated as a percentage of the premium paid by the insured. The evidence indicates that formerly the city agent generally prepared the automobile policy himself, but it would appear that for the greater part this is no longer done, the company having taken over this function. One witness claimed that as of the first of 1959 the city agent and the local agent were to all intents and purposes virtually the same. It would seem that at one time the city agent had the right to appoint sub-agents who were then local agents.

A local agent simply means an agent having a contract with an insurance company but who does not hold the appointment of supervising general agent, provincial general agent, or city agent. It would appear that at the present time the local agent's functions are very similar to those of a city agent. Although the local agent is appointed on behalf of and by the company, in practice he is generally regarded as the agent of the general agent. The local agent's field of operations is within a local area. He is paid on a commission basis just as is a city agent.

An insurance broker, unlike an agent, has no contractual relationship with a company and can offer his business to any company, being considered more or less as a representative of the insured. Generally, a broker is required to be licensed to solicit insurance business. Brokers are divided into two classes, domestic and foreign. A domestic broker is a firm, person, or corporation domiciled in Canada and holding a licence from a provincial authority to solicit insurance business. A foreign broker is one who is domiciled outside Canada and who is licensed to transact insurance business in his place of domicile, but who places business with an insurance company carrying on business in Canada. Neither type of broker has a contractual relationship with a company nor holds an agency appointment from a company.

The agency system of acquiring insurance business as it has developed in the United States and Canada differs markedly from the agency system used in England. There the acquisition of new business is carried on by inspectors who act as the middlemen between the agents and the branch office. The agent is not a professional insurance man, does not write policies, and has to rely largely upon the expert advice and assistance of the inspector. The agent is simply a man who procures business and apparently has little authority or responsibility.⁽¹⁾

(1) Insurance Supervision and Practices in England (Fire, Marine and Casualty): A Report by Deputy Superintendents Alfred J. Bohlinger and Thomas C. Morrill to Robert E. Dineen, Superintendent of Insurance, State of New York Insurance Department, 1948, pp. 57-8.

4. Classification of Insurance Companies

According to the returns of information received by the Director in the inquiry, a total of 219 companies wrote automobile insurance in Canada during the period 1950-1952. Of these, some had discontinued writing such insurance in the course of this period or had disappeared by merger, while others had commenced writing. The number of companies writing automobile insurance in Canada in each of these years was as follows:

1950 -	199
1951 -	208
1952 -	212

Of the 219 companies, 78 were incorporated in Canada, but of these 29 were subsidiaries of or controlled by British, American, or other foreign companies. For all practical purposes, therefore, the companies then writing automobile insurance may be classified as follows:

Canadian Companies	49		22.37%
British Companies	86	(including 17 Canadian companies, 2 American and 1 other foreign company)	39.27%
American Companies	74	(including 7 Canadian companies)	33.79%
Other Foreign Companies	10	(including 5 Canadian companies)	4.57%
	—		—
	219		100.0%
	—		—

The information obtained by the Director did not disclose whether all 49 Canadian companies were Canadian owned and controlled, but in any such case ownership or control was not held by a British or foreign insurance company.

Of the total Canadian automobile insurance net premiums, the proportion accounted for by the 49 Canadian companies in the three-year period for which statistical information was obtained by the Director was relatively constant at slightly less than one-third:

1950 -	32.9%
1951 -	32.0%
1952 -	32.5%

In 1952, 16 of the 49 Canadian companies each had a premium income from automobile insurance in excess of \$1, 000, 000. One company had a premium income exceeding \$8, 000, 000 in 1952, and 13 other companies had a premium income over \$500, 000 but less than \$1, 000, 000 in that year.

The percentages of total net premium income from automobile insurance in Canada written by the British, American and other foreign companies as computed by the Director were as follows for the years stated:

	<u>1950</u>	<u>1951</u>	<u>1952</u>
British	36.8%	36.3%	34.6%
United States	25.3%	26.2%	27.3%
Other foreign	5.0%	5.5%	5.6%

Broadly speaking, therefore, Canadian companies accounted for one-third of the total Canadian market for automobile insurance; one-third was held by British or British-controlled companies; and the remaining third was held by American companies, other foreign companies and subsidiaries of these two latter. Since 1953 and up to the end of 1955 some 36 additional companies entered or re-entered the automobile insurance field in Canada and obtained Dominion licences. Of these 10 were Canadian companies, 9 were British, and the remainder (17) were American or other foreign companies.

The Commission has endeavoured to obtain more up-to-date figures on the foregoing classification of insurance companies and their respective shares of the Canadian market, without being led into a major statistical investigation. The issue of the Canadian Underwriter of April 15, 1959, filed with the Commission at the hearing as Exhibit H-8, contains at pp. 39-94, inclusive, considerable information on the companies writing insurance in Canada. This source was checked with the files of the Superintendent of Insurance for Canada and, subject to the correction of errors so discovered, has been relied upon to provide the following information. These statistics are for the calendar year 1958.

The information contained in the above-mentioned issue of the Canadian Underwriter did not permit as complete a classification of automobile insurance companies on the basis of nationality or source of control as did the material collected by the Director and presented in his Statement, inasmuch as the Canadian Underwriter provided no separation of American companies from the general category of "foreign". The following picture emerges:

Classification of Companies in 1958 according to
Nationality and Control and Showing the Percentage
of Automobile Insurance Business Secured by Each
Class in that Year

	Number of Companies	Percentage of Companies	Percentage of Premium Earned
Canadian	63	25.6	34.2
British Companies (including Canadian and Foreign Companies owned or controlled by British Companies)	95	38.6	34.2
Foreign Companies (including Canadian Companies owned or controlled by Foreign Companies)	88	35.8	31.6
Total	246	100.0	100.0

The percentage figures in the last column are derived from the totals of premiums earned as given in the said issue of the Canadian Underwriter, p. 118.

It is clear that no major change in the division of the market among companies of varying nationality has occurred between the period studied by the Director and 1958. It is noted, however, that the 1958 figures taken from the Canadian Underwriter are figures of premiums earned, whereas the Director's figures for 1950-52 are of premiums written.

Another way of classifying insurance companies is by their membership in organizations or associations. Two broad groups are recognized and they are known as "Board" or "Tariff" and "non-Board" or "non-Tariff". However, the latter group may be further divided into "Conference" companies and independent companies. As the various designations will be used frequently in this report a brief description of the groups and the abbreviations by which they are designated will be given here.

At the time of the inquiry made by the Director the Board companies were organized in the following way:

Dominion Board of Insurance Underwriters, sometimes referred to in this report as the Dominion Board, had jurisdiction over all Canada and/or of one or more of the affiliated territorial associations described below. At the time of the hearing held by the Commission it was stated that the functions of the Dominion Board had been taken over by the Canadian Underwriters' Association.

1. Canadian Underwriters' Association, sometimes referred to in this report as the "C.U.A.", has jurisdiction in Ontario and Quebec and also establishes rates for some other territories.
2. Western Canada Insurance Underwriters' Association, sometimes referred to in this report as "W.C.I.U.A.", has jurisdiction in Alberta, Saskatchewan, Manitoba and Northwest Territories.
3. British Columbia Underwriters' Association, sometimes referred to in this report as "B.C.U.A.", has jurisdiction in British Columbia and Yukon.
4. New Brunswick Board of Underwriters, sometimes referred to in this report as "N.B.B.U.", has jurisdiction in New Brunswick.
5. Nova Scotia Board of Insurance Underwriters, sometimes referred to in this report as "N.S.B.I.U." has jurisdiction in Nova Scotia.
6. Prince Edward Island Board of Insurance Underwriters, sometimes referred to in this report as "P.E.I.B.I.U.", has jurisdiction in Prince Edward Island.
7. Newfoundland Board of Insurance Underwriters, sometimes referred to in this report as "N.B.I.U.", has jurisdiction in Newfoundland.

Membership in the Board organizations is purely voluntary but a condition of membership is the observance of the rates promulgated by the various rating bureaus of the Board Associations.

The Conference companies are those companies which are members of one or more of the three Conferences which operate in Ontario and Quebec and Western Canada. No Conference operates in the Atlantic Provinces. There is no central organization for the three Conferences corresponding to the Dominion Board as the Independent Conferences are organized separately as follows:

1. Independent Automobile and Casualty Insurance Conference, sometimes referred to in this report as the "Eastern Conference" or I.A.C.I.C., operates in the provinces of Ontario and Quebec.
2. Western Canada Independent Automobile Insurance Conference, sometimes referred to in this report as the "Western Conference", operates in the provinces of Manitoba, Saskatchewan and Alberta.
3. Independent Automobile Insurance Conference of British Columbia, sometimes referred to in this report as the "B.C. Conference", operates in British Columbia and Yukon.

In addition to the insurance companies which are members of one or more of the territorial associations described above, there are companies which are not members of any associations and which may be classed as independent as distinct from Board or Conference members.

Another organization of insurance companies is the All Canada Insurance Federation, whose primary functions are to watch legislation affecting the insurance business, to keep member companies informed of changes in the law which are of interest to them and to seek the development of sound legislation relating to insurance matters. The Federation has promoted the Safety Responsibility Law throughout Canada and has assisted in the organizational steps of Assigned Risk Plans in those provinces where such plans have been introduced. The Federation also conducts public relations work on behalf of all insurers.

In 1953 the Federation had a membership of more than 225 companies, including both Board and non-Board companies.

Of the 219 companies writing automobile insurance in Canada in the period 1950-52, 128 belonged to one or more Board Associations exercising jurisdiction over each part of Canada in which these companies were writing such insurance; in addition, 8 companies were members of one or more Board Associations for a particular area or areas and members of one or more Conferences for another area or areas; and 5 companies were members of one or more Board Associations for a particular area or areas and belonged to neither a Board Association nor to a Conference for other areas.

Thirty-seven companies belonged to one or more of the Conferences exercising jurisdiction over each part of Canada (exclusive of the Maritime Provinces and Newfoundland) in which these companies were writing automobile insurance; in addition

7 companies were members of one or more of the Conferences for a particular area or areas and belonged to neither a Conference nor Board Association for other areas and, as mentioned above, 8 companies were partly Board Association and partly Conference members.

Thirty-four companies, of which half were Canadian companies, belonged neither to a Board Association nor to a Conference in any area.

In the matter of the classification of automobile insurance companies by their affiliations the Commission has again attempted to get more up-to-date figures by reference to Exhibit H-8, pp.30-94, corrected as before. The material presented in this source permits a classification of the 246 companies into Board companies, Conference companies, independent companies, and companies which were members of Board organizations in some jurisdictions and Conference organizations in other jurisdictions. In the following table the affiliation is indicated in the vertical column on the left. The ownership of these companies is indicated in the top horizontal column by the letters B, BC, BF, F, FC, and C. The meanings of these letters are respectively: British company; Canadian company which is a subsidiary of a British company; Foreign company which is a subsidiary of a British company; Foreign company; Canadian company which is a subsidiary of a Foreign company; and Canadian company not a subsidiary of a British or Foreign company:

Nationality of Control Affiliation	B	BC	BF	F	FC	C	Total	Percentage of Total
Board	61	17	2	43	6	10	139	56.5
Conference	5	-	-	12	1	16	34	13.8
Board-Conference	1	2	-	3	-	9	15	6.1
Independent	7	-	-	23	-	28	58	23.6
Total	74	19	2	81	7	63	246	100.0

From this table it can be seen that those companies which were affiliated with an organization of insurance companies constituted 76.4 per cent of the total companies doing automobile insurance business in Canada, and that the wholly-independent companies constituted 23.6 per cent.

The division of automobile insurance business among Board companies, Conference companies, the Saskatchewan Government Insurance Office, and the independent companies in the ten provinces of Canada in the period 1950-1952 was as shown in the following table:

	<u>Net Premium Income</u>			
	<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>Total</u>
Board Companies	\$54,091,953	\$60,381,910	\$77,093,169	\$191,567,032
% of Total	50.0	48.7	48.6	49.0
Conference Companies	\$31,474,773	\$36,253,598	\$42,081,550	\$109,809,921
% of Total	29.1	29.2	26.5	28.1
Independent Companies	\$19,843,159	\$24,296,450	\$35,890,967	\$80,030,576
% of Total	18.4	19.6	22.6	20.5
Saskatchewan Government Insurance Office	\$2,688,943	\$3,056,154	\$3,688,599	\$9,433,596
% of Total	2.5	2.5	2.3	2.4
Total Net Premium Income	\$108,098,728	\$123,988,112	\$158,754,285	\$390,841,125

(Statement, p. 282)

Corresponding figures for 1957 were compiled by the Commission's staff in a manner which will be described later in this report (Chapter X). They are as follows:

	<u>1957</u>
Board Companies	\$99,750,000
% of Total	37.8
Conference Companies	\$52,950,000
% of Total	20.1
Independent Companies	\$104,000,000
% of Total	39.4
Saskatchewan Government Insurance Office	\$7,000,000
% of Total	2.7
Total net Premium Income	\$263,700,000

The most significant change from the period 1950-52 to the year 1957 has been the growth in the share of the market held by the independent companies. It is obvious that from an average of 20.5 per cent for the years 1950-52 the independent companies have increased their share of the market to 39.4 per cent. The independent companies had in 1957 a larger share of the total market and a larger absolute amount of business than the Board companies, which in the earlier period had almost two and a half times the volume of business enjoyed by the fully independent companies. The share of the total market enjoyed by the Conference companies appears to have declined from the period 1950-52 until 1957, falling from 28.1 per cent to 20.1 per cent.

Another way in which these companies may be classified is by the government which has licensed them to do business. Hence they may be classified into Dominion registered companies, provincial licensees, and Lloyds, the latter being in a separate category because it is not a company in the usual sense of the word but rather an association.

The distribution of business among these three categories of company is given below for selected years from 1950 to 1956.

Net Automobile Premiums Written

<u>Year</u>	<u>Dominion Registered Companies</u>	<u>Provincial Licensees</u>	<u>Lloyds</u>	<u>Premium Ratio of Dominion Registered Companies to Total</u>
	\$	\$	\$	%
1950	92,324,158	5,617,950	5,879,584	88.9
1952	137,769,156	5,481,406	9,109,274	90.4
1954	167,926,394	12,168,932	10,345,189	88.2
1956	193,327,252	15,587,037	9,053,196	88.7

(Reports of Dominion Superintendent
of Insurance, 1950, 1952, 1954 and
1956)

The table shows that from 88 to 90 per cent of the total business written has been written by Dominion registered companies.

For 1958 the corresponding figures are as follows:

Net Automobile Premiums Written

<u>Year</u>	<u>Dominion Registered Companies</u>	<u>Provincial Licensees</u>	<u>Lloyds</u>	<u>Premium Ratio of Dominion Registered Companies to Total</u>
	\$	\$	\$	%
1958	255,895,597	36,877,380	13,908,962	83.4

(Report of Dominion Superintendent
of Insurance, 1958)

For underwriting purposes, two or more companies may operate in what is known as a "group". In the majority of cases the companies in a group are financially related either directly or indirectly, but in other cases the companies have no financial relationship and are considered as a group simply because they are under common management in Canada. In some cases the members of the group pool the insurance written by the group among themselves on a predetermined percentage basis. In other cases one or more of the members of the group may reinsure their entire business with other members of the group. In still other cases there is no pooling or reinsurance arrangement. Generally speaking, each member of a particular group belongs to the same business organization, that is, Board Association or Conference.

5. Organizations of Insurance Agents

The Director's Statement reviews in some detail the history of local, provincial and national associations of insurance agents. The information presented as to the present associations does not indicate that the activities of such organizations relate directly to the practices with respect to which the inquiry has been concerned. It is not considered necessary, therefore, to review in this report the form of organization of the respective associations and the objects as set out in their constitutions. Some reference will be made to their activities in dealing with certain practices of the organized insurance companies.

Prior to 1946 associations of insurance agents were principally of a local nature, except in Ontario and Quebec where there were provincial associations. Subsequent to 1946 provincial associations have been formed in all provinces, which are affiliated with the national organization, the Canadian Federation of Insurance Agents. A few local associations continue to maintain direct affiliation with the Federation rather than through the provincial association. The objects of agents' associations are generally stated as being: to improve standards in the insurance business, to co-operate

with Insurance Departments and to promote and protect the interest of members. In the case of the Insurance Agents' Association of Winnipeg (now the Winnipeg Conference of Insurance Agents) a further object was given, "to subscribe to the principles of Tariff Insurance."

6. Factors in the Growth of Automobile Insurance,
1946-1958

There has been a considerable growth in automobile insurance since the end of World War II, as the following table shows:

<u>Net Premiums Written</u>	
<u>Year</u>	<u>Automobile</u>
1946	\$ 39,707,803
1947	56,180,958
1948	68,482,305
1949	83,884,750
1950	103,821,692
1951	116,909,988
1952	152,359,836
1953	182,912,752
1954	190,440,515
1955	204,018,202
1956	217,967,485
1957	256,747,317
1958	306,681,939

(Reports of Dominion Superintendent
of Insurance, 1946-58)

The table indicates that in the ten years 1946-56 the net automobile premiums written increased by over five times and that in 1957 and 1958 the increase was greatly accelerated. It may be of interest to know also that whereas in 1946 the net premiums written in the fire insurance business in Canada amounted to \$70,235,606, by 1952 the volume of automobile premiums written had increased to such an extent that, for the first time, it exceeded that of fire insurance. It should be noted that fire insurance premiums were increasing during the same period. In 1956 the volume of net premiums written in fire insurance amounted to \$179,504,964, and in 1958 it had reached \$191,131,509.

Several factors have contributed to this rapid growth in automobile insurance. The first of these has been the rapid increase in the number of vehicles on the road since the end of World War II. A second factor has been the steady rise in the value of automobiles, which is a reflection in part of the general rise in prices since the end of World War II. A third factor has been the rise in cost of repairs for damaged automobiles and a fourth the rise in the cost of medical, nursing, ambulance, hospital, and legal services for those injured in auto accidents or who have suffered property damage as a result of auto accidents. A fifth factor has been the rise in cost of individual insurance coverage sold by automobile insurance companies, which has been affected by an unfavourable loss experience and the charges for providing insurance services. A final factor has been the enactment of compulsory insurance laws, financial responsibility laws, safety responsibility laws, and assigned risk plans, all of which lead to wider insurance coverage.

Financial responsibility legislation, broadly speaking, provides that a motorist against whom a judgment arising out of an accident has been obtained shall have his licence suspended until the judgment is satisfied and he files proof of his financial responsibility to take care of damages arising out of any future accidents in which he may be involved. It also provides that motorists convicted of certain more serious traffic offences shall be required to maintain proof of financial responsibility for the future. Such legislation has been passed in the majority of the common law provinces of Canada since 1926, when financial responsibility legislation was first enacted in the State of Connecticut, U.S.A. Two criticisms have been directed against this type of legislation. Firstly, it is effective only if a judgment is rendered against the negligent driver; and since the victim in many cases does not take action because he feels that the chances of recovering damages are slim, the effectiveness of the law as a means of redress to victims and as a curb on negligent drivers is reduced. The second criticism is that this type of legislation makes no provision with respect to the first accident, its terms being applied only to second and subsequent accidents.

The safety responsibility law was developed to remedy the defects of the financial responsibility law. A safety responsibility law was first introduced into Canada in 1945 by the Province of Manitoba and similar legislation has since been enacted by Alberta, British Columbia, Nova Scotia, New Brunswick and Newfoundland. Legislation of this type is not in force in Prince Edward Island, for although enacted, it was subsequently repealed.

The nature of this legislation and its general effects are described in the Report on Automobile Liability Insurance by

the Legislative Research Committee of North Dakota, 1950, as follows:(1)

"The principal feature of laws of this type was the requirement of security to cover possible judgments arising out of an accident. Under this plan accidents are reported to the official administering the law, usually the Commissioner of Motor Vehicles. If it develops that a person involved in the accident was uninsured the Commissioner of Motor Vehicles evaluates the extent of the bodily injury and property damage resulting from the accident. An amount not exceeding \$11,000. is fixed, the amount being an estimate of the aggregate amount of judgments that may be recovered by persons injured or damaged in the accident. The Commissioner of Motor Vehicles sends a notice to the motorists involved, and they are required to deposit the specified amount either in cash, securities or by means of a bond. Upon failure of the motorist to deposit the security (unless all claims are settled) his licenses are suspended.

It can be seen that a law of this type, since its operation is not dependent on the obtaining of a judgment nor on any determination of whether the motorist was at fault, is stringent and effective. Its most conspicuous effect has been to bring about a substantial increase in the percentage of insured motor vehicles, usually to about 75%. The reason for this increase is that motorists fear the impact that the law may have upon them if they should become involved in accidents without having previously purchased insurance. A further effect of the law has been to induce settlement of claims by persons involved in accidents, or to compel such persons to deposit security. As a result, in a state which has enacted a security type of Safety Responsibility Law, the number of accident victims who do not obtain compensation for injuries is reduced."

In Saskatchewan automobile insurance is compulsory and in the majority of the other common-law provinces the effect

(1) pp. 118-19.

of the legislation described above has been to make automobile liability insurance virtually compulsory. It was estimated in 1953 that 93 per cent of all motorists are insured in British Columbia, Manitoba and Nova Scotia.⁽¹⁾

What are known as assigned risk plans for automobile insurance have been developed by insurance companies to provide public liability and property damage insurance for motorists who might otherwise find it difficult or impossible to obtain insurance from an individual insurance company in order to comply with the requirements of the financial or safety responsibility legislation. An assigned risk plan was introduced by insurance companies in British Columbia in 1944 and since then assigned risk plans have been put into effect in nearly all the common-law provinces. The situation which led to the introduction of the assigned risk plan is described in the submission of the All Canada Insurance Federation referred to above and may be summarized in the following way. It was recognized by all insurers that serious political difficulties would be encountered if the law required an individual to file proof of financial responsibility when at the same time no insurance company would accept the risk. On the other hand it was recognized that it was unfair that any one underwriter should be obliged to accept a risk that was seriously deemed to be unacceptable. Under an assigned risk plan any individual who requires insurance but is unable to purchase it in the ordinary way, and who is not disqualified completely by reason of a particularly bad accident or conviction record, can obtain the minimum cover required by the law from an insurance company subscribing to the assigned risk plan. The ratio of such unsatisfactory risks insured by any one company is based on its proportion of the total third party liability insurance premiums underwritten in the province.

Although assigned risk plans are operated in a number of provinces only two provinces, Manitoba and Saskatchewan, have enacted legislation referring specifically to such plans and in the case of the Saskatchewan enactment the legislation has not yet been proclaimed. According to information obtained by the Director the volume of insurance written under assigned risk plans runs to slightly in excess of one per cent of net premium income in the provinces in which such plans are operated.

(1) Estimate given in a submission made in November, 1953 by the All Canada Insurance Federation to the Manitoba Highway Safety Commission.

7. Jurisdiction over Insurance

As the subject of insurance is not mentioned in the British North America Act, the respective fields of jurisdiction of the Federal and provincial governments have been determined by the courts in a number of important cases, the majority of which reached the Privy Council. As a result of decisions reached in these cases a certain distribution of authority between the provinces and the Dominion has been achieved. The position with respect to fire and casualty companies has been described as follows:

"Over the years as a result of the appeals to the Privy Council there has been achieved a distribution of authority between provinces and the Dominion with regard to insurance which has been supported by the companies, and efforts have been made to have this accepted and introduced into the law. The Dominion has dropped the question of policy conditions and licensing of agents from its insurance laws, and the Dominion Department of Insurance has concentrated on questions of solvency and financial responsibility of the companies under its registration. As a result, Dominion registration has been much sought after, and the record . . . indicates how much this has been in the interests of the companies and the public, and the Canadian companies in their business outside Canada. Provincial legislation has been concerned with the solvency of companies incorporated in the province and who confine their business to the province of their incorporation, and with the requirement of fair and equitable terms in insurance contracts."⁽¹⁾

8. Government Supervision of Insurance

In 1875 the Government of Canada established a Department of Insurance⁽²⁾ under the supervision of a Superintendent of Insurance reporting to the Minister of Finance.

(1) Arthur Pedoe, "Federal versus State Supervision of Insurance - A Canadian View", Law and Contemporary Problems, School of Law, Duke University, Autumn 1950, Vol. 15, No. 4, p. 584.

(2) Department of Insurance Act, now R.S.C. 1952, C. 70.

The Department is responsible for the administration of the Canadian and British Insurance Companies Act⁽¹⁾ and the Foreign Insurance Companies Act,⁽²⁾ as well as other matters.

The purpose of the Canadian and British Insurance Companies Act may be shown in the following extracts from the preamble to the Act:

"WHEREAS it is desirable to define the status and powers of insurance companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and to prescribe the limitations to be placed on the exercise of such powers, and

WHEREAS it is desirable to provide for the registration of such companies and of British insurance companies which may desire to carry on the business of insurance in Canada, and for the voluntary registration of provincial companies; and

. . .

WHEREAS the insurance business transacted within and outside of Canada by companies incorporated by the Parliament of Canada, and by the Legislature of the late Province of Canada, and within Canada by British insurance companies, constitutes an important factor in the international and interprovincial trade and commercial relations of Canada; and

. . .

WHEREAS it is desirable to provide by a system of returns and inspection against such companies engaging in, or continuing to carry on, business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent, and to declare the conditions upon which such companies shall be deemed to be insolvent and be subject to be wound up under the provisions of the Winding-up Act."

(1) Now R.S.C. 1952, C. 31.

(2) Now R.S.C. 1952, C. 125.

The following extracts from the preamble of the Foreign Insurance Companies Act illustrate its purpose:

" . . .

WHEREAS foreign insurance companies, associations and exchanges, transacting the business of insurance throughout Canada, receive each year from policyholders in Canada many millions of dollars in premiums, and incur liabilities to such policyholders requiring involved actuarial and other computations for their determination, and the ability or inability of such companies, associations and exchanges to discharge such liabilities, as they become due, is dependent upon the character and value of their assets available for such purpose; and

. . .

WHEREAS it is desirable to provide, by a system of registration, deposit of securities, inspection and returns, against such foreign companies, associations or exchanges engaging in or continuing to carry on business in Canada while unable to discharge their liabilities to such policyholders as they become due or while otherwise insolvent and to declare the conditions upon which such companies, associations and exchanges shall be deemed to be insolvent and be subject to be wound up under the provisions of the Winding-up Act."

The nature and extent of Federal supervision over insurance is concisely outlined in a memorandum on the supervision of insurance, loan, and trust companies in Canada, prepared by the Department in 1938 for submission to the Royal Commission on Dominion-Provincial Relations as follows:

"The Department considers that it is its main function to see to it that all companies under its supervision are in a position at all times to meet valid claims made upon them by their policyholders, and that, so far as can be ascertained at any time, they are likely to continue to do so indefinitely. To enable it to perform this function the Acts provide for the submission of annual statements in very great detail by all companies to the Department; for an annual examination of those statements at the offices of the companies by the Department's examiners; for deposit with the Minister by British and foreign companies of securities sufficient to cover their liabilities in Canada; and for the necessary remedies in

the event of default on the part of any company. The examination involves the verification of the assets shown in the statements; the valuation of the contracts to ascertain the amount of liabilities; the examination of the contracts to see that the powers conferred by the licences are not exceeded, and this involves the filing of copies of all contracts; and the examination of the charters or other incorporating instruments to see that the corporate powers are not exceeded, and this involves the filing of all incorporating documents with all amendments thereto. The valuation of the contracts of life insurance companies requires a staff of highly qualified actuaries and the examination staff is largely recruited from that branch of the Department.

The statements of the companies as verified or corrected by the examiners are published in the Department's report consisting of two volumes, one of over 950 pages, covering fire and casualty companies, and the other of over 450 pages, covering life companies and fraternal benefit societies."(1)

As has been shown in one of the foregoing tables, from 88 to 90 per cent of automobile insurance business in Canada has been written by companies holding Dominion licences. It may be added that the vast majority of automobile insurance companies hold Dominion licences.

Provincial insurance legislation in so far as it relates to automobile insurance is contained in the following statutes:

<u>Alberta</u>	The Alberta Insurance Act, R.S.A. 1942, C. 201.
<u>British Columbia</u>	Insurance Act, R.S.B.C. 1948, C. 164.
<u>Manitoba</u>	The Manitoba Insurance Act, R.S.M. 1954, C. 126.
<u>New Brunswick</u>	Insurance Act, R.S.N.B. 1952, C. 113.
<u>Newfoundland</u>	The Automobile Insurance Act, R.S.N. 1952, C. 96. The Accident Insurance Companies (Licensing) Act, R.S.N. 1952, C. 236. The Life and Accident Insurance Agents (Licensing) Act, R.S.N. 1952, C. 239.
<u>Nova Scotia</u>	Automobile Insurance Act, R.S.N.S. 1954, C. 18 Insurance Agents Act, R.S.N.S. 1954, C. 134. Insurance Companies Act, R.S.N.S. 1954, C. 134

(1) Report of the Dominion Superintendent of Insurance for the year ended December 31, 1944, Vol. I, page lxiv.

<u>Ontario</u>	The Insurance Act, R.S.O. 1950, C. 183.
<u>Quebec</u>	Insurance Act, R.S.Q. 1941, C. 299.
<u>Prince Edward Island</u>	The Insurance Act, R.S.P.E.I. 1951, C. 77.
<u>Saskatchewan</u>	Insurance Act, R.S.S. 1953, C. 133. Automobile Accident Insurance Act, R.S.S. 1953, C. 371. Saskatchewan Government Insurance Act, R.S.S. 1953, C. 36.

Each province has likewise established an Insurance Department or Branch under a Superintendent of Insurance. Briefly, the Provincial Superintendents, like the Dominion Superintendent, are concerned with the licensing and solvency of insurers and also with the requirement of fair and equitable terms in insurance contracts to safeguard the insuring public.

Due to the efforts of the Provincial Superintendents, the Canadian Bar Association and the companies themselves, substantial uniformity in contract provisions in the common-law provinces has been attained in life, fire, automobile and accident and sickness insurance. There is, however, no great degree of uniformity between the Province of Quebec and the common-law provinces.

CHAPTER III

ORGANIZATIONS OF BOARD AUTOMOBILE INSURANCE COMPANIES

The purpose of this chapter is to describe the Dominion Board of Insurance Underwriters and its territorial associations as they existed at the time at which the Director of Investigation and Research pursued his inquiry. Statements made by counsel for the C.U.A. during the hearing held by the Commission in April, 1959 indicate that the Dominion Board no longer exists, its functions having been taken over by the Canadian Underwriters' Association.

A. Structure of the Board Organizations

1. The Dominion Board

The Dominion Board of Insurance Underwriters (sometimes referred to in this report as the "Dominion Board" or simply as the "Board") was made up principally of British and American companies including their Canadian subsidiary or controlled companies. The 128 companies which were Board members as classified by the Director, wherever they operated in Canada, may be grouped from the point of view of ownership as follows:

British companies (including 15 Canadian companies, 2 American companies, and one foreign company which were subsidiaries of or were controlled by British companies)	75	58.6%
American companies (including 4 Canadian companies which were subsidiaries of or were controlled by American companies)	40	31.25%
Other foreign companies (including 2 Canadian companies which were subsidiaries of or were controlled by other foreign companies)	5	3.9%
Canadian companies	8	6.25%
Total	128	100.0%

Thus, of the total number of Board companies which were completely under the jurisdiction of the Dominion Board wherever they operated throughout Canada, approximately 94 per cent consisted of British companies, American companies, or other foreign companies or companies which were subsidiaries of or were controlled by British, American, or other foreign companies. If those companies are included which were partially under the jurisdiction of the Dominion Board, or belonged to a Board organization in one or more territories and a Conference organization in other territories, the figure is reduced to approximately 90 per cent. By 1958, as appears from the figures obtained from the Canadian Underwriter, quoted in Chapter II, only minor changes had occurred in these percentages.

As was indicated in Chapter II, the Board companies' net premium income in the years 1950 to 1952 inclusive formed between 48.6 per cent and 50 per cent of the total net premium income of all companies doing business in Canada. In 1957 this percentage figure had dropped to 37.80.

The Dominion Board had jurisdiction over all of Canada, and, as already described, over all of the following affiliated territorial associations, sometimes also known as the Tariff Association:

- (1) Canadian Underwriters' Association (C.U.A.)
- (2) Western Canada Insurance Underwriters' Association (W.C.I.U.A.)
- (3) British Columbia Underwriters' Association (B.C.U.A.)
- (4) New Brunswick Board of Underwriters (N.B.B.U.)
- (5) Nova Scotia Board of Insurance Underwriters (N.S.B.I.U.)
- (6) Prince Edward Island Board of Insurance Underwriters (P.E.I.B.I.U.)
- (7) Newfoundland Board of Insurance Underwriters (N.B.I.U.)

Membership in the above organizations, as provided in their constitutions, is open to any joint stock insurer in the fire, automobile and casualty insurance field but Factory Mutuals, Lloyds and Reciprocal Insurers are not eligible for membership.

This is said to be due to the need to have a common basis of experience for the ascertaining of rates.

The C.U.A., W.C.I.U.A., and B.C.U.A., each establish premium rates for their members in the territory over which each exercises jurisdiction, and therefore are described as "rating" associations. The remaining territorial associations do not establish automobile insurance rates.

The Dominion Board was an unincorporated organization formed in 1929 as the Dominion Board of Fire underwriters, its organization being subsequent to the formation of the majority of the territorial associations. The change to its present name occurred at the annual meeting held on October 9, 1934. By Article II of its Constitution, the Board had jurisdiction over all classes of insurance, other than life and ocean marine, which were under the control of the various territorial associations. Its offices were located in the city of Montreal and the principal full-time officer of the Board was the Manager. Honorary officers were a President and two Vice-Presidents elected from the ordinary membership.

Membership in the Dominion Board fell into two classes, ordinary and Association. These are described in Article IV of the Dominion Board Constitution.

"(a) ORDINARY MEMBER:

Any Insurance Company (other than Life) duly incorporated, together with its affiliated Companies under the same management and doing business in the Dominion of Canada, which is a Member of the different Tariff Associations in every Province where it operates, is eligible for membership in this Board, provided that any chartered Company operating in Canada with which it may be affiliated either financially or by control, locally or at head office be already or become simultaneously a Member of this Board.

Should a Company, a Member of this Board, become affiliated with a Company not a Member of the Board, the membership of the first Company shall cease in three months unless the latter Company becomes a Member within that period."

After defining an affiliated company Article IV then goes on to say that:

"An affiliated Company may be admitted to separate Membership provided that the affiliated Company has a separate existence and managership and may be separately represented at meetings, but shall not be entitled to have a separate vote except as provided in Article VI hereafter."

The ordinary membership of the Dominion Board, according to the return of information submitted to the Director by the Manager, consisted of 169 companies in 1950, 166 in 1951, 168 in 1952, and 169 in 1953; of these, 118, 124, 129, 131, were stated to be writing automobile insurance in each of the years named above (Statement, p. 24).

An Association Member is defined by Article IV as follows:

"Any territorial Tariff Insurance Underwriters' Association or other organization that by its by-laws recognizes the jurisdiction of the Board."

The election of members is provided for in Article V as follows:

"(a) ORDINARY MEMBERS:

Companies desiring membership shall make application on a form provided for that purpose which shall be submitted to the Council. Upon the application being approved by that Body, all Members of the Board shall be notified thereof, and, unless any Member shall file a written objection with the Manager within one month, the application shall be granted. Should objection be taken the Council shall decide thereon subject to appeal to the Board.

(b) ASSOCIATION MEMBERS:

Any territorial Tariff Insurance Underwriters' Association or other organization that recognizes the jurisdiction of the Board by By-law duly passed by such Association or organization shall, upon approval of the Council of the Board, be and become an Association Member."

Article XVII of the Constitution provides the following with regard to cessation of Membership:

"Membership of any Company may be terminated for non-payment of dues if so determined by an affirmative vote of three-fourths of the Members present at any Regular or Special Meeting of the Board.

Membership of a Company may be terminated if so recommended by the Council and the causes given in its report appear just and reasonable and are so determined by an affirmative vote of three-fourths of the Members present at any Regular or Special Meeting of the Board, provided that one month's notice has been given to Members."

The Council of the Dominion Board, as provided for by Article X of the Dominion Board Constitution, consisted of a President, two Vice-Presidents and 16 other representatives of ordinary members. The powers of the Council are indicated by the following extracts from Article XI of the Dominion Board Constitution:

"The Council is authorized to exercise all necessary powers to promote the purposes of the Board as herein declared . . . The Council shall be authorized to receive and investigate complaints against a Member or Members. The Council shall generally conduct the business of the Board . . .

The Council shall be especially charged with the carrying out of the objects as herein set out:

- (a) The Council shall have power to decide on all matters referred to it. The Council may, at its discretion, exercise all the powers of the Board (with the exception of the amendment of the Constitution and such other matters herein specially provided for), and it shall be superior to all committees of the Board, the intention being that the Council may, within these limitations, act in matters where it would otherwise be necessary for the Board to act, and to avoid the necessity of calling a General Meeting.
- (b) The Council shall have power at any regularly called meeting thereof to enact from time to time rules and regulations for the operation, administration and management of the Board. Such Rules and Regulations shall cover and provide for: . . . classifications of risks; compensation for business; the establishment and maintenance of uniformity of policy, forms and wordings and underwriting practices and the supervision and control of general rate levels; the safeguarding to Members only, the advantages of membership; enforcement of

rules and regulations and correction of violations, and generally all matters convenient to be dealt with by the Council. . . ."

Among the powers held by the Council are the following important provisions entitled "Penalties and Decisions" contained in Article XI:

"Whenever the Council by a vote of the majority of the Members present shall decide that any Member has been guilty of unfair or unethical conduct involving a violation or evasion of the principles herein outlined, it may take whatever action with respect to such Member (excepting expulsion from Membership - see Article XVII) that it may decide by a majority vote to be the most appropriate and helpful to the industry as a whole.

. . .

Any Member who shall claim that any decision of the Council is unjust or that such decision will unfairly prejudice his interest may appeal from such decision to the Board The Board by a vote of a majority of the Members present may reverse any such decision of the Council."

Article XVI of the Constitution provided for the appointment of six other standing committees of which the Automobile Committee was one. The Automobile Committee was responsible for controlling forms and practices in the automobile insurance field. In this respect an important function was the consideration and final approval each year of the rating program for the whole of Canada, other than Newfoundland, as recommended by the Dominion Board-C.U.A. Standing Committee on Automobile Rates and Rules (hereinafter often referred to as the Dominion Board-C.U.A. Committee). Rates for Newfoundland up to at least 1952 were established by the Newfoundland Rates Committee of the C.U.A., which consulted with the Newfoundland Agents' Association. In submitting its proposed rating program for 1953, the Dominion Board-C.U.A. Committee recommended that it assume responsibility for Newfoundland rates.

Although it was a standing committee, the Dominion Board-C.U.A. Committee was not provided for as such in the Constitution. It had sub-committees to deal with specific matters, but as a full committee it met annually in the fall of the year. These meetings, which were attended by representatives from each of the territorial associations except that of Newfoundland, dealt with such matters as the re-defining and establishing of rating

areas, classification of motor vehicles, methods of rating, etc., in addition to the principal function of recommending a rating program for the following year for all of Canada, excluding Newfoundland, for submission to the Automobile Committee for approval with or without amendments as the case might be. The program was then considered by each territorial association with respect to the territory over which it exercised jurisdiction and approved as submitted or amended in particular respects as the case might be.

In addition to the above, there were numerous committees in the automobile field appointed from time to time by the Board on an ad hoc basis to deal with specific problems, e.g., Committee on Method of Rating Automobiles, Committee on Statistics, and Committee-Province of Saskatchewan Package Policy. The Dominion Board dealt with classification of agents and their scales of remuneration through special committees, the Automobile Committee, and meetings of the membership of the Board.

Expenses of the Dominion Board were met by a pro rata assessment. Article XV states that the pro rata assessment shall be

" . . . contributed to by the Association Members in the proportion that their respective net premium incomes for the last year for which the figures are available bear to the aggregate of the net premium incomes of all Association Members for the said period.

Net premiums are hereby defined as the gross premiums written less returned premiums and re-insurance with members of the Association Members."

Among the objects and purposes of the Board, as declared by Article III of the Constitution, were the following :

" . . .

- (c) To supervise and control commission and brokerage terms.
- (d) To supervise and control general rate levels.
- (e) To conserve and promote the general interests of its Members.
- (f) To supervise all territorial Tariff Insurance Underwriters' Associations, or other organizations which may come within the scope of its

jurisdiction, and to be vested with authority to carry into effect any regulations which may be deemed necessary in the conduct of such supervision of matters affecting the general interests of its Members, and in no way limiting the generality of the foregoing:

- (i) To promulgate, supervise and control policy forms and wordings and underwriting practices to the end that the greatest degree of uniformity in forms, wordings and practices may be achieved throughout Canada,
- (ii) To establish and maintain a department of research on all matters appertaining to the business of insurance."

The Dominion Board had two established avenues of collaboration with its territorial associations, one of which was the Board-C.U.A. Joint Committee described above, the other being the Managers' Conference. Article XX of the Dominion Board Constitution provided that:

"There shall be a Conference of Managers of the Association Members called at or about the time of the Annual Meeting of the Board and each such Manager shall have the right to attend. Other paid officials of Association Members may attend upon invitation of the President or the Manager of the Board."

The Manager of the Dominion Board of Insurance Underwriters was to act as Chairman. Meetings were to be held at or about the time of the Annual Meeting of the Board, while special meetings were to be called by the Chairman upon his own initiative. The recommendations of the Conference were to be transmitted through the Dominion Board of Insurance Underwriters to Association members.

The objects of the Association Manager's Conference are stated in Article XX as follows:

"As it is advisable for the welfare of Tariff Insurance in Canada that there should be as much uniformity as possible in the principles, practice and policy of the Association Members, the object of the Conference is declared to be to promote close co-operation and collaboration amongst the Association Members in their common interest."

Summary

The Dominion Board was the senior and supervisory body of the Board Associations. Non-Canadian companies and their subsidiaries or controlled companies made up 90 per cent or more of the ordinary membership. The Board companies wrote about half of the automobile insurance business in Canada in the years 1950 to 1952. As we have seen, in 1957 the share written by the Board companies had dropped to less than 40 per cent.

The membership clauses of the Constitution of the Dominion Board appear to have been designed to bring as many companies as possible into the organization. One member of a group could not join unless all the other members of the group also joined. Membership of a company was terminated if any of its affiliated companies ceased to be a member.

The Council exercised most of the powers of the Board and appears to have been the chief depository of active powers. It was specifically empowered to enact rules and regulations regarding the classification of risks, compensation for business, the establishment and maintenance of uniformity in policies, the provision and control of general rate levels, and the safeguarding to members only of the advantages of membership. The Council was empowered to enforce rules and regulations relating to these matters, including the correction of violations.

Article III of the Constitution of the Dominion Board stated that among the objects and purposes of the Board was the control of commission and brokerage terms, general rate levels, policy forms and wordings, and underwriting practices, so as to ensure the greatest degree of uniformity in Canada.

The work of the Council was delegated, in so far as automobile insurance is concerned, to the Automobile Committee and its sub-committees and to the Dominion Board-C.U.A. Committee. The Conferences of Association Managers and the Dominion Board-C.U.A. Committee would appear to have been useful vehicles of co-operation between the Board, its territorial associations, and the ordinary members.

2. The Canadian Underwriters' Association

The Canadian Underwriters' Association traces its origin to 1883 when companies transacting fire insurance formed the Canadian Fire Underwriters' Association. As various other classes

of insurance were introduced separate organizations were formed for each of these classes of business. One of these organizations was the Eastern Automobile Underwriters' Association, formed in June, 1915, with activities being confined to Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. In 1923 the Canadian Casualty Underwriters' Association was formed. In 1935 it was decided to bring the three associations covering the fire, automobile, and casualty fields into one organization. The Canadian Underwriters' Association was therefore formed, with branches for fire, automobile, and casualty insurance, each branch having jurisdiction over the same geographical area as its predecessor. On April 1, 1937, the C.U.A. was incorporated without share capital under Part II of the Dominion Companies Act. Its head office is in Montreal or Toronto, depending on the residence of the President. Branch offices are maintained in Quebec, Sherbrooke, Three Rivers, Ottawa, Hamilton, Kitchener, London, Windsor, Fort William, Winnipeg and Calgary.

Article IV of the C.U.A.'s General By-Laws provides that:

"1. The Membership shall include:

- (a) any Company which on the 1st day of January, A.D. 1937 was a Member of or an applicant for membership in the Dominion Board and in addition was at the said date a Member of the unincorporated body heretofore known as the Canadian Underwriters' Association;
- (b) any Underwriters' Agency controlled by such Company which Underwriters' Agency was a Member of the Canadian Underwriters' Association at the said date, . . .
- (c) any Company which makes written application for membership in the form prescribed and which after conforming to the formalities required by the Association is accepted for membership in accordance with these By-Laws.

Provided however that no Company nor Underwriters' Agency which is not a Member of the Dominion Board or applicant for such membership or which is or becomes affiliated with, guarantees or is guaranteed by or in any manner controls or is controlled by or through a holding Company controlling any Company, Underwriters' Agency or body or combination of Underwriters transacting insurance in the Dominion of Canada or any Province thereof or in the

Dominion of Newfoundland and which is not a Member of this Association of the Dominion Board, shall become or continue to be a Member of this Association."

Section 2 of Article IV sets out the procedure to be followed in admitting new members:

"2. Application for Membership:

An applicant shall make application in writing to a Manager on a form provided for that purpose and the application shall be submitted immediately to the Council. Upon the application being approved by the Council, particulars shall be forwarded to all Members and, if no objection is taken within fourteen (14) days after the mailing of such particulars, the application shall be accepted and the applicant so advised by the Manager.

Should any objection be taken, the Council shall decide the matter and forthwith give notice of its decision to the Members. The decision of the Council shall be final unless seven (7) or more Members record in writing their objections to such decision within fourteen (14) days after the mailing of such notice. Upon receipt of such objections, the matter shall be referred to the next General Meeting of the Association. A majority of the votes cast at such General Meeting shall determine the acceptance or rejection of an application."

Section 3 of Article IV provides for procedure to be followed in the event of a company's wishing to withdraw from membership.

"3. Withdrawal from Membership:

Any member may give written notice of withdrawal to a Manager, who shall immediately advise the President. The President shall forthwith appoint a Committee and it shall be incumbent upon such Member to discuss with such Committee the reasons for withdrawing before tendering its resignation from membership.

Such withdrawal shall not take effect nor release the Member so withdrawing unless all dues to the end of the Association's current fiscal year have been paid and until the resignation is accepted by the Council. Such acceptance shall be given within three (3) months of receipt of notice of withdrawal or resignation by a Manager; otherwise the withdrawal becomes automatically effective."

Section 4 of Article IV provides for the forfeiture of membership:

"4. Forfeiture of Membership:

Should a Member be found guilty of any infraction of the By-laws or of a violation of any provision or agreement, or of having failed within the prescribed delay to conform to the penalties imposed under the provisions of the By-laws, and the matter having come before a meeting of the Association, . . . the Association may, at any such meeting, upon a majority of the votes cast thereat and subject to confirmation by the Dominion Board as herein provided, declare such Member's membership forfeited either immediately or as and from a given date not exceeding three (3) months from the date of such meeting. . . ."

The return of information submitted by the President of the C.U.A. to the Director showed the membership in each of the years 1950 to 1953 inclusive as 171, 167, 168, and 168 respectively; of these 115, 119, 120, 125 paid assessments to the C.U.A. for automobile insurance in the respective years.

The affiliation of the C.U.A. with the Dominion Board is set forth in Article VII, section 1 of the C.U.A.'s by-laws:

"1. Dominion Board:

Inasmuch as the Association is affiliated with and under the jurisdiction of the Dominion Board, every Member of the Association carrying on the business of Insurance in the Dominion of Canada or any Province thereof must be and remain a Member of the Dominion Board and of every other Underwriters' Association which is affiliated with and under the jurisdiction of the Dominion Board, in the territory in which the Member transacts Insurance business."

Section 2 of Article VII provided for the formation of agents' associations to be affiliated with the C.U.A., whose constitutions, by-laws, rules and regulations were to be subject to the approval of the C.U.A.:

"2. Agents' Associations:

Agents' Associations, composed exclusively of Agents, in cities and towns where, to the Council, it appears advisable, may be formed in affiliation with this Association.

Such Agents' Associations may adopt Constitutions, By-Laws, Rules and Regulations governing their Members and canvassers and other matters set forth herein, provided they do not conflict with or affect the By-Laws of this Association, but no such enactment shall be binding upon Members of any Agents' Association unless and until they have been approved by the Council of this Association."

It does not appear that any agents' associations affiliated with the C.U.A. have been in existence in recent years.

It has been the practice of the C.U.A. officials to confer on mutual problems with the officials of the Maritime and Western Board Associations and, on occasion, to lend services of technical personnel when requested. Representatives of the C.U.A. and other territorial associations attend the meetings of the Dominion Board-C.U.A. Committee and of the Conference of Association Managers.

The C.U.A. also retains as agents the N.B.B.U. and N.S.B.I.U., making an annual payment to each as compensation for time spent by its employees acting as agents for the C.U.A. in automobile and casualty insurance matters, e.g., acting as liaison between the insurance agents and the C.U.A. for information regarding fleet rating and other problems.

Article XVI of the C.U.A.'s General By-Laws provides for the election of four honorary officers consisting of one President, and three Vice-Presidents, the latter representing the three branches of the C.U.A. (viz., automobile, casualty and fire) and being the Chairmen of these branches. The principal full-time officers of the C.U.A. are two Managers, one located in Montreal and one in Toronto. The Managers are the chief executive officers of the respective territories for which they are appointed. They hold office from and are subject to the instructions of the Council. Each Manager is empowered by section 4 of Article XV:

"(b) . . . to institute an investigation into any violation coming to his attention or any alleged or suspected violation and to deal with such and impose penalties as herein provided."

The real governing body of the organization is the council of the C.U.A. This is a body of 15, consisting of: the President, the three Vice-Presidents, three members who represent and are the Vice-Chairmen of the three C.U.A. branches, five members from the Association at large (all of the foregoing being elected at the Annual Meeting of the Association), plus three other members (from the representatives of the members of the Association at large) elected by the honorary officers and the eight members of the Council already elected.

The duties and powers of the Council are set forth in subsection (c) of section 2 of Article XV:

"The Council shall have the power to decide on all matters referred to it. The Council may at its discretion and subject to the approval of the Dominion Board in matters affecting the interests of other Associations, exercise all the powers of the Association (with the exception of the amendment of the General By-Laws, forfeiture of membership, and such other matters herein specially provided for), and it shall be superior to all Committees of the Association; the intention being that the Council may, within these limitations, act in matters where it would otherwise be necessary for the Association to act, and to avoid the necessity of calling an Association Meeting."

Subsection (d) of section 2 says further that:

"The Council shall have power at any regularly called meeting thereof to enact from time to time rules and regulations for the operation, administration, and management of the Association and its respective Branches. Such Rules and Regulations shall cover and provide for: the constitution of Branches, Officers, Committees and servants and their functions and powers; meetings, voting and representation; classifications of risks; and, subject to the approval of the Dominion Board, compensation for business; distribution and limitation of underwriting; the safeguarding to members only the advantages of membership; rating schedules and rates and the promulgation thereof; maps and plans; membership in Local Agents' Associations; enforcement of rates, rules and regulations and correction of violations, and generally all matters convenient to be dealt with by the Branches having relation to their respective classes of business and the requirements thereof.

All General Rules and Regulations shall be submitted to an Annual or Special Meeting of the Association and shall thereafter cease to have force and effect except to the extent that they are approved by such meeting; . . . "

Minutes of Council Meetings show that matters dealt with include, among other things: receipt and approval of Minutes of the Automobile Branch; consideration and approval of recommendations regarding commissions payable to agents; financial matters within the organization; appointment of provincial or supervising general agents of member companies in the territory within the jurisdiction of the C.U.A.; and receipt of complaints regarding infractions relating to automobile rates.

Each of the three branches - automobile, casualty, and fire - has an Executive Committee composed of a Chairman (who is a Vice-President of the C.U.A.), a Vice-Chairman (who is a member of the Council), and twelve representatives of members writing the classes of business within the jurisdiction of the branch, who are elected by the branch membership. These are provided for in section 1 of Rule 1 of the Rules and Regulations of the C.U.A., which also provides that the President of the Association and the President and Manager of the Dominion Board shall sit as ex officio members of the Executive Committee of each branch without the right to vote. Section 2 of Rule 1 defines the duties and powers of the branch Executive Committees as follows:

- "(a) The Branch Executive Committees, subject to the authority vested in the Finance and Office Management Committee of the Association and in the Dominion Board, shall supervise, direct and control the management, operation and administration of their respective Branches.
- (b) The Executive Committee of each Branch shall deal with all matters within the jurisdiction of its Branch, except those which the Committee may consider to be desirable to reserve for submission to the whole Branch, and shall have the power to appoint and act through committees."

One of the important functions of the Automobile Branch Executive Committee each year is the consideration and final determination for the C.U.A. membership of the draft rating program as submitted by the Dominion Board -C.U.A. Committee. The Automobile Branch Executive Committee also deals with such matters as rating problems, appointment from time to time of committees or sub-committees to deal with specific matters, and consideration of recommendations of committees or sub-committees. Minutes of the Executive Committee Meetings are received and approved at subsequent Annual or Special Meetings of the Branch.

In addition to the Automobile Branch Executive Committee, there is the Dominion Board-C.U.A. Committee and the Standing Sub-Committees thereof. In the period 1950-53 there were eight C.U.A. Sub-Committees relating to automobile insurance, some of which Sub-Committees were of a continuing nature while others were appointed on a more or less ad hoc basis to deal with specific matters at particular times.

3. Other Territorial Associations

In the matter of autonomy and affiliation with the Dominion Board, several of the territorial associations had a status considerably different from that of the C.U.A.

The Director's Statement says that the W.C.I.U.A. was an autonomous organization which had not become a member of the Dominion Board. Yet, there was always close affiliation with the Dominion Board because the latter's membership largely embraced membership of the W.C.I.U.A., and the executive officers, committees, etc. of the Dominion Board were composed of the Canadian Managers of companies, the majority of which were members of the W.C.I.U.A. The Dominion Board was, therefore, regarded as the senior Tariff Association and its recommendations were carefully considered.

With respect to the autonomy of the W.C.I.U.A., the submission of the Winnipeg Conference of Insurance Agents is in disagreement. This is clear from the following excerpt from page 20 of their brief:

"In the W.C.U.A. [W.C.I.U.A.] the pattern is a little different in that the Dominion Board companies are represented in the W.C.U.A. membership by their local branch managers. It is quite incongruous [sic] to suggest that 'X' company's general Manager at the Dominion Board will vote 'yes' at a motion of the Dominion Board and then permit his branch manager at the W.C.U.A. to vote 'no' when considering the same motion. In other words, whatever is decided at the Dominion Board level is automatically followed through at the Territorial Association level."

Again on pages 18-19 the brief of the Winnipeg Conference of Insurance Agents after making reference to certain parts of the Statement which stated that the W.C.I.U.A. is an autonomous organization has this to say:

"The foregoing excerpts of the Director's report contend to show that insofar as commission is concerned the W.C.I.U.A. is an autonomous independent organization making its own decisions. This is in complete variance with the facts and with their actual method of operation. Since 1948 the Insurance Agents Association of Winnipeg, (now called the Winnipeg Conference of Insurance Agents) in various discussions and meetings with officials of the W.C.I.U.A. dealing with commission, has been repeatedly told that insofar as commission is concerned, the W.C.I.U.A.

no longer has any control and that any discussion must take place only with the officials of the Dominion Board.

This, of course, is in accordance with the objects and purposes of the Dominion Board as quoted on page 28 (c) of the Report.

'To supervise and control commission and brokerage terms'."

As evidence of the Dominion Board's control over the territorial association, the Winnipeg Conference of Insurance Agents' brief refers to three Appendices and alleges that:

"Perusal of these Minutes and others will show conclusively that all programmes of Commission are originated and set by the Dominion Board".

In fact these three Appendices are not as clear and convincing as the Insurance Agents' brief alleges. Appendix I is irrelevant to this inquiry inasmuch as it deals with a revised scale of fire commissions. Appendix 3 is similarly irrelevant because it deals with fire insurance. Appendix 2, however, does relate to automobile business and does show that on at least one occasion the matter of commissions was referred by the W.C.I.U.A. to the Dominion Board. The relevant material taken from the Minutes of a meeting held 25 and 27 April, 1956 is as follows:

"COMPENSATION FOR AUTOMOBILE BUSINESS

(Orig. and last Ref. item 56.11 Minutes of Exec. Com. 1st March, 1956)

(a) Standard Form

A letter dated March 27th, 1956, from the President of the Dominion Board in respect to maximum commissions payable was noted.

(b) Extension Policy - Province of Saskatchewan.

Communications from General Agents requesting that consideration be given to increasing the scale of commission payable to local agents in the larger cities and towns on an Extension Policy was considered. Since this matter had already been referred to the Dominion Board, no action was taken."

The Commission has concluded from the foregoing evidence that the W.C.I.U.A. was technically autonomous but that its response to proposals, decisions or actions of the Dominion Board was much affected by the high degree of overlapping of company personnel existing in the two organizations.

While the B.C.U.A.'s Constitution provided in Article VI for affiliation with the Dominion Board, the operation of this clause was made conditional upon a similar clause being enacted by all other territorial associations, and since this condition was not met there was no formal affiliation. The N.S.B.I.U. was in an exactly similar position. The N.B.B.U. had no formal affiliation with the Dominion Board or the other territorial associations, but by practice and usage it regarded the Dominion Board as the senior organization. The P.E.I.B.I.U. had no affiliation with the Dominion Board or the various territorial associations but by practice and usage it regarded the Dominion Board as a senior organization. N.B.I.U., however, was an association member of the Dominion Board.

W.C.I.U.A. and B.C.U.A., in replies to the Director, stated that it had been their practice to have officials confer on mutual problems with officials of other territorial associations, and occasionally to lend services of technical personnel when so requested.

W.C.I.U.A. has jurisdiction over automobile insurance in the Prairie Provinces and the Northwest Territories. The B.C.U.A. has jurisdiction over the Province of British Columbia and the Yukon Territory. While the objects of the N.B.B.U. relate mainly to fire insurance and while jurisdiction over the province in the matter of automobile insurance has never been conceded to it by the C.U.A., yet the objects of the N.B.B.U. provide for that organization to assume jurisdiction over the conduct of automobile insurance within the province and there are provisions in the Constitution and By-Laws specifically relating to automobile insurance quite apart from the N.B.B.U.'s activities as an agent for the C.U.A. In the case of the N.S.B.I.U. its objects and also certain of its rules and regulations relate to automobile insurance and hence it would appear that automobile insurance is within the jurisdiction of the N.S.B.I.U. despite the fact that the C.U.A. has claimed authority to exercise jurisdiction over automobile insurance in Nova Scotia.

In the case of the P.E.I.B.I.U. it was stated that the objects and functions related solely to fire insurance and that the organization did not exercise jurisdiction over automobile insurance, the territory being under the jurisdiction of the C.U.A. Information contained in the Director's Statement does not make

entirely clear the division of jurisdiction between the P.E.I.B.I.U. and the C.U.A.

Although the return of the N.B.I.U.'s Manager indicated that the N.B.I.U. did not exercise jurisdiction over automobile insurance in Newfoundland, the territory being under the jurisdiction of the C.U.A., one of the local rules, in effect a separation rule, did not specifically exclude automobile insurance.

Both the W.C.I.U.A. and the B.C.U.A. bore a very strong organization resemblance to the C.U.A. In the case of the two former organizations the chief full-time officer was a Manager and the honorary officers included a President and two Vice-Presidents, the latter having been the Chairmen of the fire branch and the automobile branch respectively. In each case there was an organization corresponding to the C.U.A. Council and having similar functions, although in the W.C.I.U.A. it was called an Executive Committee whereas in the B.C.U.A. it was called a Council. The ruling body with respect to automobile insurance was, in the W.C.I.U.A., the Automobile Branch Rating Committee, and in the B.C.U.A., the Executive Committee of the automobile branch. The objects of the automobile branches of these two organizations, as set out in their constitutions, were substantially the same and in important respects resembled those of the C.U.A. in that they provided for establishing equitable premium rates, the regulation of policy wordings, the regulation of compensation for business, registration of agency appointments, promotion of insurance underwriting interests, prevention of undesirable practices, the collection of data, and the doing of such other work as would tend to reduce expenses to members and lessen the cost of insurance to the public.

Although the membership rules of the W.C.I.U.A. did not require that members be joint stock companies, in fact all of its members were joint stock companies. The B.C.U.A.'s Constitution restricted membership to joint stock companies. Prior to 1951, the B.C.U.A. required any new applicant to be a member of the Dominion Board. The membership of the W.C.I.U.A. embraced organizations which were not members of other territorial associations or of the Dominion Board. The W.C.I.U.A. apparently did not require that affiliates or subsidiaries must also be Board members, although it was required that a company having affiliates or subsidiaries be admitted only on the distinct understanding that such organization operate strictly in accordance with W.C.I.U.A.'s Constitution and By-Laws. The provisions relating to applications for membership and to withdrawal from membership were substantially similar to those of the C.U.A. for both the B.C.U.A. and the W.C.I.U.A.

The remaining territorial associations bore less resemblance to the C.U.A. as regards their organization. In the case of the N.S.B.I.U. there were a Chief Executive Officer called a Manager and two honorary officers, a President and one Vice-President. There was also a Council composed of the President and Vice-President and seven representatives of the members, its function being similar to that of the Council of the C.U.A. or the Council or Executive Committees of the two western organizations. Membership was restricted to joint stock companies and new members had to be members of the Dominion Board. Procedures for applying for membership and withdrawing from membership were similar to those of the C.U.A. The N.S.B.I.U. had no separate automobile branch.

In the case of the N.B.B.U., the P.E.I.B.I.U. and the N.B.I.U., there were no separate branches or committees or groups relating to automobile insurance as such. The N.B.B.U. required all affiliates or subsidiaries of a company to be members of the N.B.B.U.

In the matter of rate-making, as in the foregoing matters, there was a considerable difference between the W.C.I.U.A. and the B.C.U.A. on the one hand and the territorial associations in the Atlantic Provinces. Both the W.C.I.U.A. and the B.C.U.A. were autonomous as regards rate-making for the territories under their respective jurisdiction, and the conclusions of the Dominion Board-C.U.A. Committee were regarded by these Associations as being purely recommendatory. The recommended program was submitted to the Automobile Branch Committee of each organization and then to the Executive Committee of each organization, and might be accepted without amendment or might be amended in the light of local conditions, and then was promulgated to the members. The Automobile Branch Committees of both organizations dealt from time to time with such matters as specific rate problems and classification of territories, and appointed sub-committees to study and report on particular matters.

On the other hand the N.B.B.U., the N.S.B.I.U., the P.E.I.B.I.U., and the N.B.I.U. adhered to rates set by the C.U.A. rating manuals.

Representatives were sent to the Dominion Board-C.U.A. Joint Committee meeting each year by all of the territorial associations with the exception of that in Newfoundland. All of the territorial associations excepting the N.B.I.U. and possibly the B.C.U.A. were represented at the annual Conference of Association Managers.

In addition to the three Maritime territorial associations, there was a body called the Maritime Underwriters' Advisory Committee, which was formally recognized in the by-laws of each of the Maritime territorial associations as follows:

"The Maritime Underwriters' Advisory Committee, as is now or may hereafter be constituted, is recognized as a Joint Committee consisting of three duly appointed Representatives from each of the three Maritime Boards; two of the Representatives being either General Agents or Branch Managers or a General Agent and Branch Manager, and the third the Manager of each Board.

The function of this Committee is to meet, consider and advise the three Boards on all matter of general policy, including, but not limited to suggestions for changes and additions in forms, general minimum rates, general rules, and commissions to Resident Agents, with a view to maintaining uniformity in general practices and presenting a united front in all matters concerning the welfare of the public and the insurance business in the Maritime Provinces."

The functions of this Committee were not confined to fire insurance but, according to Minutes of meetings, also included the making of recommendations in respect of automobile insurance.

B. Conduct of Activities of Board Organizations

1. Requirement that Members Obey By-Laws, Rules and Regulations

The recognized condition of membership in Board organizations is that member companies must obey all by-laws, rules and regulations, and rates promulgated thereunder, and pay dues, assessments and charges and submit to penalties for infractions of the by-laws, rules or regulations. In the case of the C.U.A., this requirement is spelled out in Article VIII, section 2:

"2. Duties and Responsibilities:

It shall be the duty of every Member strictly to observe the By-Laws and to sign a copy thereof on attaining membership; to enforce the observance of the By-laws by its Agents and Representatives; to pay dues, assessments and charges and submit to penalties, all as herein provided, and to report to the Manager having jurisdiction all Agency appointments in existence or hereafter made and cancellations thereof, as

soon as affected.

The obligation to observe the By-laws applies equally to Agents, their clerks and employees.

The By-laws, with an undertaking to be bound thereby and by all Rules, Regulations and Rates enacted thereunder from time to time in such form as the Council may determine, shall be signed by each Member's Representative."

The W.C.I.U.A. and B.C.U.A. have substantially similar requirements. The members of the N.B.B.U. were also required to sign an undertaking to abide by the constitution, by-laws and all rules and regulations of the N.B.B.U.

The enforcement of the by-laws, rules and regulations is placed in most of the Board organizations with the manager or branch secretary, who may institute inquiries with respect to infractions either on his own initiative or on complaint filed by a member. Such inquiries may be directed to the activities of a member company or of any agent of a member. The manager, if he finds an infraction, shall rule as to what action the offending member should take to rectify the matter. Appeal may be taken to the association against a ruling of the manager when confirmed by the executive. Penalties may be imposed if an offending member does not rectify the matter to the satisfaction of the manager. Suspension or forfeiture of membership could be imposed as an ultimate penalty and in the latter event all rating material, containers, maps and plans would have to be returned to the association.

2. Requirements for Placing Business with Board Members

(a) The "Non-intercourse" and "Separation" Rules

The Director's Statement traces the changes which have been made from time to time in the respective Board territories in what are termed "non-intercourse" and "separation" rules. Although neither rule appears to have been in force in the C.U.A. territory during the period surveyed, one or the other rule has been in force in other territories although the restrictions appear to have been largely removed by 1953:

The "non-intercourse" rule may be stated as prohibiting agents or members from transacting business with a non-member company or its representative. One form in which it appeared was that members, their representatives, or their

agencies might not:

"place or negotiate any class of insurance under the jurisdiction of the Association with, or accept any such insurance from, any company, underwriters' agency, underwriter or body or combination of underwriters or any partner, associate, member, officer or employee of any company, firm, person or institution, not a Member of the Association."

Under the "separation" rule an agent of a member is prohibited from acting as agent for a non-member company but is not prohibited from placing business with such non-member, presumably in the capacity of a broker.

In the brief which the agents' association submitted to the special general meeting of W.C.I.U.A. in June, 1948, the introduction of the non-intercourse rule in W.C.I.U.A. territory was attributed to close working arrangements between the W.C.I.U.A. and the Winnipeg Agents' Association, as the following extract indicates:

"It will be recalled that many years ago in consideration of the limitation of agency appointments and close working arrangements with the W.C.I.U.A., the Winnipeg Agents' Association agreed to observe and introduce into their Constitution what is known as a Non-Intercourse rule . . . "

(Exhibit H-1)

The brief went on to state that the rule had been extended to all agents' associations in the major cities in the Prairie Provinces. The brief pointed out that a strong element among agencies thought that the rule was no longer desirable and in 1953 both non-intercourse and separation rules were abrogated in W.C.I.U.A. territory, although an article was inserted in the constitution of the Insurance Agents' Association of Winnipeg "To subscribe to the principles of Tariff Insurance".

The non-intercourse rule in B.C.U.A. territory was formally withdrawn in 1949 and a separation rule was repealed in 1951. Restrictions of this kind were continued in the Maritime Provinces and a substantial majority of the member companies doing business in New Brunswick applied a non-intercourse rule in that province. In the other Maritime Provinces the restrictions were apparently not applied as generally.

The situation in C.U.A. territory was described in the evidence of Toronto agents in the following way.

Mr. G. J. Mylrea testified:

"BY MR. SCOTT:

Q. Are there any restrictions imposed upon the activities of your company by the Board companies?

A. You mean so far as where we will place business or from whom we will solicit?

Q. Any restrictions at all?

A. To my knowledge, none."

(Hearing, p. 75)

Mr. W. E. S. Tomenson testified:

"BY MR. SCOTT:

Q. Of these companies that you write business for — I do not think you answered this — what percentage of them would be Dominion Board companies?

A. Again the C.U.A. I think is the governing factor in this, and I would say —

Q. Now the C.U.A.?

A. Probably between 25 and 30 companies would be C.U.A., I would say; around 5 would be Independent Insurance Conference; and probably two would not belong to either. Then again I must also say that outside of that there would be some C.U.A., some Independent, and some independent independents that we have no agency agreements with but with whom we do business."

(Hearing, p. 223)

Except for the C.U.A. and N.B.I.U., restrictions on supervising general agents and provincial general agents appear to have been continued in the rules of the Board Associations. By definition, except for the C.U.A. and N.B.I.U., a Supervising General Agent and a Provincial General Agent do not place insurance with "an insurer not a member of the Association or with a representative of such insurer." In effect such a requirement confines the business of such agencies to member companies.

The brief of the C.U.A. contained the following representations in regard to the restrictions on the placing of business with non-member companies or their representatives:

"The Director says:-

'and in the majority of the regions they also agree that one class of agent shall be prohibited from placing fire or automobile insurance with Non-Member companies or through representatives.'

To understand the scope of this rule and where it applies it is necessary to appreciate the abuse of the term 'Agent' and its loose use in the industry. As has been pointed out, a General Agent, either Supervising or Provincial is by definition the Manager for the Company for the territory for which he is appointed. As Manager for a Member of the Board, he is by virtue of his appointment entitled to attend meetings of the Board on behalf of his principal, hold office, and vote. He is also entitled to hold maps and plans and rating material on behalf of his principal, and it is submitted that the rule is not unreasonable as applied to one fulfilling the function of Manager for a territory for a Member.

The City Agency class does not exist in any of the Atlantic Provinces and the restriction does not apply to this class where it does exist in the other provinces.

The Local Agency class exists across the Dominion and the restriction applies only with respect to Local Agents in the Maritime Provinces. A similar rule formerly applied in British Columbia and to Local Agents in certain named cities in the Prairie Provinces. The rule can only be maintained with the co-operation of the Agents themselves and as agency groups in a territory have asked for the revision of the rule, the rule has been abandoned.

It is submitted that the Director's comment quoted above is quite unjustified. It obviously has no application to a situation when a general agent in fact is acting as the sole representative in an administrative capacity in a territory for an insurer. Such a territorial manager could hardly claim as a matter of right that he was free to serve his principal's competitor to the detriment of his principal. Moreover, even with respect to local agents in the Maritimes, the non-intercourse rule is fully justified, since it is merely a

method adopted to protect the rates, rating material and association service from those who have not contributed to the cost of producing same."

(Brief of Canadian Underwriters
Association et al, pp. 29-30)

According to evidence given before the Commission by Mr. H. M. Martin of Vancouver, B.C.U.A. empowered its Manager to secure information from agents as to the degree of support given to B.C.U.A. members. Mr. Martin testified as follows:

"BY MR. QUINLAN:

Q. Just one question, Mr. Martin. There is a paragraph entitled 'Rules re Control of Association Services', and this reads:

'The manager of the B.C.U.A. is empowered to request evidence from agents of the degree of support given, or to be given to B.C.U.A. members.'

Was any interpretation ever given to you by your Association as to what that meant, the degree of support given? Was that ever elaborated upon?

A. Mr. Quinlan, I can say this, that in December 1958 — I am not sure it was November or December — but within six months we had such a demand from the British Columbia Underwriters' Association.

Q. That is Abernethy Insurance Associates?

A. That is correct. We debated at first whether we would divulge the information because we felt it was private and privileged information.

Q. What information did they ask for?

A. They asked us for the total premiums which we wrote, I think in the year 1957, for both tariff companies or Board companies, and the total premiums we wrote for all other underwriters in fire and automobile, everything, the whole class of business, all classes of business. We subsequently obtained the information from our statistical bureau, our statistical accounting service, rather, and we then had a meeting among the

partners and decided that we would be jeopardizing our position with the underwriters if we did not divulge the information.

Q. Was anything further heard of the matter?

A. Nothing further."

(Hearing, pp. 261-62)

(b) Prohibition of Ceding or Assuming Re-insurance from or to Non-Members

The prohibition of the ceding or assuming re-insurance from or to non-members may be regarded as an extension of or part of the non-intercourse rule. Several of the territorial associations had rules designed to confine re-insurance business to companies which were members of those associations.

In the case of the C.U.A., the relevant section, found in Rule VI, section 1, provides that:

"1. No Member, its Representative or Agent, shall:

- (a) assume any re-insurance from any company, underwriter's agency, underwriter or body or combination of underwriters or any partner, associate, member, officer or employee of any company, firm, person or institution not a member of the Association, in respect of any class of insurance under the jurisdiction of the Association, whether such business is offered at tariff rates or otherwise or with or without commission; but this provision shall not apply to the re-insurance of the entire business of a Non-Member Company which has ceased to transact business in the Dominion of Canada and Newfoundland;
- (b) cede re-insurance of any risk under the jurisdiction of the Association to any Non-Member corporation doing a direct-writing insurance business in the territory under the jurisdiction of the Association; provided that in instances where all members decline to accept a re-insurance it shall be permissible to place it with any Non-Member body, but in such case the onus shall be upon the Member, its

representative or Agent, placing the business to prove to the satisfaction of a Manager that every member writing the class has been offered the risk and has declined it, and all such risks shall be subject to Association rates and rules;"

The W.C.I.U.A. prohibited ceding or assuming re-insurance to or from non-member companies, the rule applying to members and to their general agents.

The B.C.U.A. had a similar rule applicable to members, their representatives and agents.

The N.S.B.I.U. had a rule substantially similar to that of the C.U.A.

The N.B.B.U. apparently did not have an explicitly stated separate rule regarding re-insurance. Re-insurance, however, would appear to have been ruled out by the non-intercourse rule previously mentioned, but it is not certain from the evidence whether this rule did in fact apply to re-insurance.

Although the P.E.I.B.I.U. did not have an explicit non-intercourse rule with respect to re-insurance, the definitions of provincial general agent and local agent have non-intercourse rules with respect to all business falling within the jurisdiction of the Board. Presumably this would mean that re-insurance could be ceded to or assumed from only those companies that were members of the P.E.I.B.I.U.

The N.B.I.U. did not have any provision in its rules regarding re-insurance.

3. Restriction on Number of Agents and Offices

(a) Restrictions on the Number of Agents

All territorial associations had some restriction on the numbers of certain classes of agent which could be appointed and on the cities in which they could be appointed.

The C.U.A.'s rules and regulations made provision for the matter in Rule VII, section 2, subsection 3, which reads as follows:

"(3) A General Agent or a City Agent may be located only in the Commission Districts of Toronto or Montreal . . . "

Further restriction was provided in Rule VII, section 6, subsections (1), (2) and (3):

"(1) A Member may not appoint a Supervising General Agent or a Provincial General Agent in a province where the Member has a Head Office or Branch Office that accepts business, falling within the class of business for which such appointment was made, emanating from that province from any other source than from such appointment.

(2)(a) A Member may not appoint more than two City Agents in the Commission District of Toronto whether the appointment is for one or more of the Fire, Automobile or Casualty Branches; . . .

(b) Where a Member controls one or more subsidiaries, Members of the Association, all under the same management in Canada it shall be permissible to allocate to the Member or to another subsidiary a City Agency appointment to which the Member of a subsidiary is entitled, subject to a limitation of three such transfers within any such group of companies.

(3) A Member may not appoint more than one City Agent in the Commission District of Montreal whether the appointment is for one or more of the Fire, Automobile or Casualty Branches; . . . "

It was stated by one witness, Mr. W. E. S. Tomenson, that the C.U.A. required that the appointment of sub-agents by city agents had to be approved by the C.U.A. Mr. Tomenson gave the following evidence:

"BY MR. SCOTT:

Q. Do you know what Rule 7 provided in general terms?

A. As I understand it, the companies who had had excepted agencies under certain situations had to then change from that point to a grouping of agencies. I believe it was provincial agents, city agents, city agents' sub-agents and local agents.

I believe that there were named commissions for all of these various categories. I became a city agent with

a sub-agency plant, and our sub-agency plant was on the basis that we had to name our sub-agents to the C.U.A. and get authority that we could get the overriding commission from that particular named list.

If I was to take on a further sub-agent I had to produce the name of that man and apply to the Underwriters' Association so that he could be one of my named sub-agents. I also had to put his name on the copies of the reports that went to the companies so that we would know whether we were entitled to the overriding commission on their business."

(Hearing, pp. 190-91)

However, Mr. A. J. Mylrea testified:

"Q. Are you allowed to have as many sub-agents as you want?

A. We can if we want to lose money.

Q. Would you just explain that?

A. Well, the sub-agent today with the current rules can get as much as we do. It was not that way until just recently, but it has been changed."

(Hearing, pp. 75-76)

Thus, it would appear that, although the appointments of sub-agents had to be approved, there was no restriction on the number of sub-agents that a city agent might have.

In the case of the W.C.I.U.A., the relevant sections of the Constitution provided that a general agent might be located: in Manitoba only in Winnipeg; in Saskatchewan only in any one of Regina, Moose Jaw or Saskatoon; in Alberta only in either or both of Calgary and Edmonton. A city agent might be located only in Winnipeg, but a provision limiting the number of appointments by a member to two was repealed in 1952.

The B.C.U.A. provided that city agents might be appointed only in the districts of Vancouver, Victoria and New Westminster, but a provision limiting the number which might be appointed was repealed in 1952 and replaced by a provision that a member could appoint city agents in any of the above districts, provided the appointment was registered with the B.C.U.A. and

provided that the member had a contract with each such agent.

The N.B.B.U. had a by-law which provided that a city agent might be located only in the Commission District of Saint John and similarly with respect to general agents. There was also a prohibition against members appointing a supervising or provincial general agent if the member had a head or branch office accepting business falling within the Board's jurisdiction from any other source than such appointment.

While the N.S.B.I.U. provided that general agents might be located only in the city of Halifax, there were specific exceptions in the case of four particular firms authorizing the location of their offices outside Halifax.

The P.E.I.B.I.U. provided that general agents domiciled in the province were required to be located in Charlottetown. General agents were limited to a maximum of 15 local agents within the province. As in other jurisdictions a member was prohibited from appointing a general agent if the member had a head or branch office accepting business falling within the Board's jurisdiction from any other source than such appointment.

The N.B.I.U. rules provided that general agents were limited to the city of St. John's and that members were permitted only one local agent in any city, town or village. Local agents were required to have their place of residence in the city, town or village for which they were appointed, although exceptions might be made subject to the approval of the Manager of the N.B.I.U. in respect of certain adjacent towns and villages.

(b) Required Approval of Certain Appointments

Another feature common to the constitutions or by-laws of many of the territorial associations was approval by the Association of certain appointments.

This was provided for in the C.U.A. Rule VII, section 4, sub-section 2:

"(a) No appointment of a General Agent or City Agent shall be effective until such appointment has been approved by the Association."

The section listed a number of appointments which were not permitted. These prohibitions related to the appointment of sub-agents or to reciprocal appointments of sub-agents. Members of the C.U.A. were also required to record all agency appointments with the C.U.A. as well as any cancellation of or other changes in such appointments.

The B.C.U.A. provided that the appointment of general agents by members had to be approved by the B.C.U.A. while appointment of city agents had to be registered as well as approved. In practice approval was granted only if such appointments were in accordance with the rules of the B.C.U.A.

The general by-laws of the W.C.I.U.A. provided for the recording of all agency appointments and the approval of certain appointments.

The N.B.B.U. required the registration and approval of appointments of general agents and city agents. Such appointments were not effective until approved. The Secretary had authority to reject any such appointment for any reason which was considered contrary to the spirit of the rules and regulations of the N.B.B.U., but such ruling might be appealed to the Executive Committee. The by-laws prohibited the appointment of banks, trust companies, automobile dealers, sales agencies, garages, or officials or employees of the foregoing as agents.

The N.S.B.I.U.'s power of approving or rejecting appointments of agents was not clear and would appear to have been shared with the Dominion Board and the Canadian Underwriters' Association.

In the case of the P.E.I.B.I.U., all agency appointments required the Board's approval before becoming effective and members were required to record all changes in or cancellation of such appointments.

(c) Restriction of the Location of Head Offices and Branch Offices

Two territorial associations restricted the locations of head offices and of branch offices of member companies.

The C.U.A. restricted the location of head offices but apparently not of branch offices, at least not in regard to automobile business. The relevant provisions were found in Rule VII, section 2, subsection 1:

"(1) The Head Office of a member if in the Province of Ontario or Quebec may be located only in the Commission Districts of Toronto or Montreal, except in the case of the Quebec Fire Assurance Company, the Head Office of which is located in the City of Quebec."

The W.C.I.U.A. named the cities within the territory in which the head offices of members might be located. According to the brief of the Winnipeg Conference of Insurance Agents the

location of branch offices of members was also specified by the W.C.I.U.A. as follows: if in the Province of Manitoba, only in Winnipeg; if in the Province of Saskatchewan, only in one of the cities of Regina, Moose Jaw, or Saskatoon; if in the Province of Alberta, only in either or both of the cities of Calgary and Edmonton.

(d) Prohibition of Agents' Having Financial Interests in Other Agencies or from Having Branches

The C.U.A.'s regulations prohibiting agents from having financial interests in other agencies were contained in Rule VII. General agents and city agents were defined in part as agents who had no such interests, and, in addition, section 2, subsection 3 of the Rule provided as follows:

"(3) . . .

A General Agent or a City Agent may not have any financial interest, either directly or indirectly, by ownership of stock or otherwise, in any other agency in Ontario or Quebec, except in the case of Dale & Company Limited, with respect to Payne & Hardy Limited in Hamilton and D.J. Morland Limited in North Bay."

As shown in the brief of the Winnipeg Conference of Insurance Agents W.C.I.U.A.'s definitions of city agent, provincial general agent, and supervising general agent provided that they should not maintain or have any financial interest in any other agency either directly or indirectly by ownership of stock or otherwise, and further that no local agents should have any financial interests either directly or indirectly in the agencies of general agents.

The N.B.B.U. by-laws prohibited city agents and general agents from maintaining branches or offices in the province elsewhere than in the "Commission District" of Saint John.

(e) Views of Agents and Board Organizations with Respect to Limitations on Agency Appointments

The Director's Statement contains the following review of the positions taken by agents and Board organizations with respect to limitations on agency appointments:

"For example, with respect to agency appointments agents have contended that limitations on the number of agents which can be appointed by a member company could prevent a single company from appointing an individual who wanted to enter the business as an agent if that

company had already made its full number of primary appointments, while a large group controlling five or six member companies would have a distinct advantage in this respect. The Board organizations have taken the position that agents themselves support restrictions on members and agents, e.g., by agency qualification laws; that the limitations relate only to City Agents; that while there is such a limitation the rules do not prevent a member company offering its business to any agent or broker, however he may be appointed; and that once a person acquires the status of a City Agent by appointment from a member he holds that status in regard to all other member companies which enter into a similar contract with him and by so doing such other companies do not affect their right to make appointments of City Agents on their own behalf.

The agents have also contended that the restriction upon agents acquiring financial interests in other agencies is a flagrant disregard of agents' individual rights pointing out that the companies are free to establish branch offices and that if an agent accumulates a considerable business in other cities and wishes to open a branch office he should not be prohibited from doing so. It is also contended that there is no similar rule in the United States and many agencies have expanded and established branches throughout the country.

In this respect the Board organizations have taken the position that an agent can absorb another firm if he wishes to do so, but that the Rule prevents such agent from collecting two commissions, its purpose being to prevent the setting up of a 'puppet' sub-agency and the collecting of both direct and overriding commissions which would increase the cost of insurance to the public. The agents, however, contend that the companies could spot and stop such tactics if attempted and there is no need for such a blanket prohibition as contained in the Rules and Regulations or By-laws."

4. Mandatory Maximum Rates of Commission for Agents

Another aspect of the activities of the Dominion Board and its territorial associations has been the setting of maximum rates of agents' commissions. The information obtained by the Director and presented in the Statement and the oral evidence given to the Commission at the hearing may be summarized in the following way.

Maximum commission rates payable to the various classifications of agent were contained in the by-laws or rules and regulations of the various rating associations pertaining to the territory over which each exercised jurisdiction. These rates were binding on the members carrying on business in such territory. The scale of remuneration of the various types of agent for the different classes of automobile insurance was considered from time to time by the Dominion Board, which made recommendations with regard to rates of commission to the Board's various affiliated rating associations. The return of information from the Dominion Board stated that these recommendations were arrived at from time to time by committees of the Dominion Board, sometimes by a committee especially appointed for the purpose, and at other times by the Automobile Committee. It was stated that the rates of remuneration were discussed with agents or representatives of agencies bodies. The committee's report was then considered and adopted as submitted or amended by the membership at a general meeting. The final conclusions were then referred to the rating associations with recommendations for their adoption.

The various rating associations stated that their practice had been to consider the scales of commission recommended by the Dominion Board and that, although they had followed these recommendations in large measure, they had, on occasions, modified or amended them.

It appears that in the period since 1949 the rates of commission have been substantially identical in all territories except Newfoundland. In the return of information submitted by the Manager of the Dominion Board it was stated that prior to 1948 there had been different classifications of agents and scales of commission in the various rating associations. The oral evidence of insurance agents given before the Commission is to the same effect. It indicates in general that some rates of commission, the so-called "graded commissions", were set by Board rating associations. At the same time, in the so-called "excepted cities" commission rates were negotiated between individual agencies and the companies whom they represented. Prior to 1948 the general agent received an overriding commission on all his business, both direct and indirect.

Mr. J. Mylrea of Toronto (hence in the territory under the jurisdiction of the C.U.A.) testified that in his experience rates of commission were always named by the Board Associations and latterly by the C.U.A. Although there was consultation by the C.U.A. with agents in regard to rates of commission, the outcome was not always to the agents' liking (Hearing, pp. 74-75).

Mr. W.B.S. Tomenson, also of Toronto, testified that in the 1930's there had existed a category of "excepted city agents" who were located in the so-called "excepted cities" of Montreal, Toronto, Winnipeg, Vancouver, New Westminster and Victoria. Such "excepted agents" had been able to negotiate their commissions with the companies for which they worked. On business placed with those Board companies with whom the agencies did not have "excepted agency" arrangements, the agents received graded commissions from the Board companies. Graded commissions were defined by the witness as a specified commission for a particular class of business, e.g., passenger cars, commercial vehicles, etc. This situation continued until 1948 when Rule VII of the C.U.A. in effect abolished such "excepted agencies" (Hearing, pp. 188-89). Mr. Tomenson testified that prior to 1948 he had received commissions of 30 per cent from companies with whom he had an "excepted agency" arrangement, but that from companies with whom he did not have such an arrangement he received graded commissions of perhaps 20 per cent (Hearing, pp. 192-93).

Similarly, Mr. B. C. Ryan, an agent from Winnipeg (hence in the territory under the jurisdiction of the W.C.I.U.A.) testified that prior to 1948 there had been no control by the Association of automobile insurance commissions in Winnipeg. Prior to 1948 commission rates had been privately negotiated between the agents and the companies. This apparently applied to all agents' commissions (Hearing, pp. 114-15). He testified further that prior to 1948 agents' commissions in Winnipeg ranged from 25 per cent to as high as $32\frac{1}{2}$ per cent. Mr. Ryan said that his own agency got $32\frac{1}{2}$ per cent from one company and 30 per cent from the majority of companies. He added that the loss experience for the clientele on whose business he was getting $32\frac{1}{2}$ per cent was no better than for the clientele on whose business other companies were paying him 30 per cent. However, he did say that for the company giving him $32\frac{1}{2}$ per cent he was performing extra services, such as writing policies for sub-agents and undertaking loss adjustment work (Hearing, pp. 157-60).

Similarly, Mr. H. M. Martin, an agent from Vancouver (hence in the territory under the jurisdiction of the B.C.U.A.) testified that prior to 1948, Vancouver, Victoria and New Westminster were in the category of "excepted cities" in which no mandatory scale of commissions existed. However, in outlying areas commissions were prescribed by the Underwriters' Association (Hearing, p. 254).

In 1948, the Dominion Board Committee, which had been studying commission rates for some time, submitted a report which recommended the elimination of most of the differences discussed above. The report subsequently was adopted by the Dominion Board,

recommended to the rating associations, and in turn adopted by them in 1949. The effect of these recommendations was a reduction in the rates of commission on direct business. The change in rules also included a provision that the general agent should get an overriding commission only on his indirect business or that of his sub-agents, but not on his own direct business.

The general nature of the reductions in commissions on direct business as indicated by the evidence of agents was as follows: on private passenger automobiles from their former levels to 20 per cent; on commercial vehicles from 20 per cent to 15 per cent; and on inter-urban transport and taxis from 20 per cent to $7\frac{1}{2}$ per cent. Mr. Tomenson testified that under Rule VII the city agents had to name their sub-agents to the C.U.A. and get authority from the C.U.A. to collect overriding commissions on these sub-agents' business (Hearing, pp. 190-91).

The evidence of witnesses as to the rates of commission promulgated in 1948 corresponds with the rates set out in the rules and regulations of the C.U.A. which were in effect in 1949. The C.U.A.'s Rule VII, section 9, sets out the rates of commission payable to agents on business falling within the jurisdiction of the Automobile Branch. In subsection (1) it is stated that:

"(1) The respective rates of commission set out hereunder apply to all classes of business falling under the jurisdiction of the Automobile Branch."

and subsection (2) states that these rates apply to the Provinces of Ontario and Quebec. However, since the returns of information obtained from Board companies carrying on business in the Maritime Provinces indicate that rates payable in those provinces were the same as those set out in subsection (2), it would appear that the rates in the subsection were intended to apply to all territories over which the C.U.A. purported to exercise jurisdiction, and hence to the Maritime Provinces as well as to Ontario and Quebec. In the Director's Statement it is indicated that these rates of commission were not applicable to Newfoundland. It would seem to follow, in the absence of any evidence to the contrary, that these rates applied to Ontario, Quebec, New Brunswick, Nova Scotia and Prince Edward Island.

Subsection (2)(a) provided that with respect to supervising general agents:

"(2) Provinces of Ontario and Quebec:

(a) Supervising General Agent:

There shall be no control as to the rate of

commission payable to a Supervising General Agent, but such freedom of control shall apply only to the Member for which he is so appointed and only in respect of the class of business for which he has been so appointed."

Subsection (2)(b) provided with respect to a provincial general agent that:

"(2) Provinces of Ontario and Quebec:

. . .

(b) Provincial General Agent:

A Provincial General Agent may receive no more than the following rates of commission:

- (i) On Direct Business, the rates of commission payable to a Local Agent.
- (ii) On business emanating from the Sub-Agency plant of such Provincial General Agent located in the Commission District in which the Provincial General Agent has his place of business, no more than the rates of commission payable to the sub-agent who produced the business, plus an Overriding Commission not exceeding $7\frac{1}{2}\%$.
- (iii) On business emanating from the Sub-Agency plant of such Provincial General Agent located outside the Commission District in which the Provincial General Agent has his place of business, no more than the rates of commission payable to the sub-agent who produced the business, plus an Overriding Commission on such business subject however to such Overriding Commission being reasonable and being approved as such by the Association.

- (iv) On business emanating from a Domestic or Foreign Broker, no more than the rate of commission payable to such Broker, plus an additional commission not exceeding 5%."

Subsection (2)(c) of section 9 provided with respect to a city agent that he might receive no more than the following rates of commission:

"(2) Provinces of Ontario and Quebec:

. . .

(c) City Agent:

A City Agent may receive no more than the following rates of commission:

- (i) On Direct Business the rate of commission payable to a Local Agent.
- (ii) Where a City Agent has an established substantial Sub-Agency plant at the date of the coming into force of these rules, with the approval of the Association he may be paid the rates of commission payable to the sub-agent who produced the business plus an Overriding Commission not exceeding $7\frac{1}{2}\%$ on his business emanating from such Sub-Agency plant as is located in the Commission District of the city in which he has his place of business.
- (iii) Where a City Agent is the sole source of business of a Member for the Commission District of the city in which he has his place of business and is the one through whom all the Member's business originating in the said district must pass, with the approval of the Association he may be paid the rates of commission payable to the sub-agent who produced the business plus an Overriding Commission not exceeding $7\frac{1}{2}\%$. . ."

With respect to local agents, subsection (2)(d) of section 9 provided that a local agent might receive no more than the following rates of commission:

"(2) Provinces of Ontario and Quebec:

. . .

(d) Local Agents:

A Local Agent may receive no more than the following rates of commission:

- (i) 20% on all types of risk rated under the Private Passenger Automobile and Non-Owned Automobile Sections of the Automobile Manual, except risks subject to Fleet Rating by the Association.
- (ii) 15% on all types of risk the rate of commission for which is not fixed by the next preceding and succeeding sections (i) and (iii).
- (iii) $7\frac{1}{2}\%$ on Interurban Transports and all types of risk rated under the Public Automobile Section of the Automobile Manual, . . ."

With respect to brokers, subsection (2)(e) of section 9 provided that:

"(2) Provinces of Ontario and Quebec:

. . .

(e) Brokers:

- (i) Domestic Brokers may receive no more than the rate of commission payable to a Local Agent.
- (ii) Foreign Brokers may receive no more than a rate of commission of 5% on the class of business referred to in subparagraph (d)(iii) above [inter-urban transport and certain classes of public automobiles] and no more than

a rate of commission of 10% on other classes."

In 1950 the commission rate on private passenger vehicles was reduced to $17\frac{1}{2}$ per cent in the Province of Quebec.

The representatives of the agents' associations who appeared before the Commission gave evidence as to the manner in which agents were informed as to changes in rates of commission and as to the attitude of agents toward such changes.

When agents of Board companies were informed in 1948 that the Dominion Board was planning to make changes in rates of commission a brief was prepared by the Insurance Agents' Association of Winnipeg for submission to the W.C.I.U.A. In the brief it was contended that the proposed reductions in commissions were so drastic as to jeopardize the continuation of the operations of insurance agents. Concern was also expressed over the effect of the changes on the maintenance of sub-agents and canvassers by larger offices. The brief expressed agreement that a reduction in commissions on public liability and property damage insurance was necessary but stated agents knew of no reasons for reductions in other rates of commission. A brief along similar lines was also prepared by the Vancouver Insurance Agents' Association. Delegations from both agents' associations were sent to meetings of the underwriters' associations and the presidents of the respective agents' associations were given an opportunity to make a statement to the appropriate underwriters' association on behalf of the agents. There were, however, no negotiations carried on with respect to the rates of commission.

Rates of agents' commissions were again revised by the C.U.A. in 1953. According to the representatives of the insurance agents the principal change was a reduction in the commission on passenger car insurance from 20 per cent to 15 per cent. The changes were decided on at the Annual Meeting of the C.U.A. held on May 27, 1953 and are shown on page 45 (y) of the C.U.A.'s Rules and Regulations, issued August, 1953. The revised section reads as follows:

"(d) Local Agent:

A Local Agent may receive no more than the following rates of commission:

- (i) $7\frac{1}{2}\%$ on Interurban Transports and all types of risk rated under the Public Automobile Section of the Automobile Manual except

Hotel, School, Golf and Country Club automobiles.

- (ii) 15% on all other types of risk the rate of commission for which is not fixed by the next preceding paragraph."

A somewhat different course was followed by the Board companies in acquainting agents with the plan to change rates of commission in 1953, according to the evidence given before the Commission by the representatives of the agents' associations. Their evidence was to the effect that a Dominion Board committee, consisting of three company officials, visited agents' groups in various parts of Canada and discussed the reasons for the proposed changes in rates. The reasons, as the witnesses recalled them, were that the companies had had a very bad loss experience on automobile insurance which would necessitate a substantial increase in insurance rates. In view of adverse reaction by the public to previous increases in insurance rates the companies wished to minimize the amount of the increase by reducing the commission rate to agents from 20 per cent to 15 per cent. At the same time it was indicated there would be a reduction in the company expense factor used in computing rates of insurance by 5 per cent. It was pointed out to the agents the Board committee met that in view of the increase in the rates of insurance the dollar revenue of agents from the lower rate of commission would be about the same as it had been under the old higher rate. In general, the agents' associations did not agree with the proposed reduction in their rate of commission and it was suggested by some that there should be no change until an accounting study had been made of agents' actual costs of doing business. The changes in rates of commission were made effective by Board companies in 1953 as already indicated.

It was stated in evidence by Mr. Tomenson of Toronto that a further change was made by the C.U.A. in rates of commission on January 1, 1959 when overriding commissions on sub-agency business were eliminated. This change applied to other types of insurance as well as to automobile insurance. Mr. Tomenson testified that agents heard of the plan to eliminate overriding commissions on sub-agency business about November, 1957 and requested a meeting with insurance companies. The meeting appears to have taken place in February, 1958 and was attended by six representatives of C.U.A. companies, four representatives of the Toronto Insurance Conference of insurance agents, and seven representatives of the Ontario Insurance Agents' Association. Four representatives of Independent Conference companies also attended the meeting (Hearing, pp. 198-99, 202-03, 233-36). According to the evidence of Mr. C. A. Baines,

President of the Independent Automobile and Casualty Insurance Conference, this organization was not represented at the meeting (Hearing, p. 339). The four representatives of Independent Conference companies are also members of the Independent Automobile and Casualty Insurance Conference (I.A.C.I.C.), but were not present officially on behalf of that Conference. Mr. Baines did not know why they were present but assumed they were attending as members of another Conference, the Independent Insurance Conference concerned with fire insurance (Hearing, pp. 359-61).

It appears that the great majority of members of the I.A.C.I.C. are also members of the Independent Insurance Conference concerned with fire insurance (Hearing, p. 354).

In March, 1958 when agents in Toronto had heard that the change in rates of commission had been recommended by the Dominion Board to the C.U.A. the President of the Toronto Insurance Conference wrote to the President of the C.U.A. on March 21, 1958 requesting further consideration of the representations of the agents opposing the change and suggesting a joint examination of the operating costs of agency business by an independent investigator. The agents requested that the proposed action to reduce commissions be postponed pending further discussion between agents and the C.U.A. About the same time Mr. Tomenson sent a letter to practically all members of the C.U.A. with which his firm had agency contracts expressing concern over the proposed change in commission rates and suggesting that rates of commission should be related to the type of service provided by the insurance agent. Mr. Tomenson said in evidence that although he had received replies from a number of companies there was no practical result (Hearing, pp. 227-31).

In connection with the elimination of the overriding commission on sub-agency business, Mr. Tomenson testified that as he now received no compensation for handling such business he had advised some agents who were doing a good part of their business with a particular company to become direct agents for such company. He implied that in the case of some other sub-agents who might wish to use the services of the larger insurance office some adjustment might be made with respect to commissions. In regard to percentage rates of commission Mr. Tomenson said that for some lines of automobile insurance the rate was 50 per cent of what it was for his agency in 1939 and in the case of inter-urban business it was 25 per cent of the pre-war percentage rate (Hearing, pp. 213-14).

Although the C.U.A., particularly in connection with recent changes in rates of commission, appears to have been prepared to inform agents as to proposed changes and to discuss the nature of the changes with them, the rates of commission could not

be said to be negotiated between the C.U.A. and the insurance agents or any association of agents. The establishment of maximum rates of commission has been determined by the C.U.A. and changes in rates and classifications have been put into effect by members of the Association in accordance with the regulations of the organization.

Rates of Commission in Newfoundland

Newfoundland did not become a province of Canada until 1949 and rates of commission set out in Rule VII of the C.U.A.'s Rules and Regulations had never been applicable in Newfoundland. Some time after Newfoundland's entry into Confederation the Dominion Board arranged for a committee to proceed to Newfoundland to integrate practices there with those existing in the rest of Canada. Pending the outcome of the committee's work members were prohibited from raising rates of commission in Newfoundland. The working out of an acceptable scale of commissions was not completed until 1953.

A circular issued on April 27, 1953 by the Automobile Branch Chairman contained the following:

" . . . When consideration was being given to the 1953 Rating Programme a delegation from Newfoundland attended at the time of the March Council Meeting and met with the Newfoundland Committee of the Dominion Board.

Alternative suggestions were left with the delegation for consideration by Agents in Newfoundland. The Agents met on April 24th and have accepted the following terms:-

A Commission rate of 20% on Private Passenger and Commercial Automobiles without any allowance for Sub-Agency business effective May 1st, 1953."

According to information received by the Director these new Commission rates appear to have been introduced on the above date by Board companies writing automobile insurance in Newfoundland apart from one company which apparently did not differentiate between commission rates paid in Newfoundland and those paid in other territories.

CHAPTER IV

ORGANIZATIONS OF CONFERENCE AUTOMOBILE INSURANCE COMPANIES

1. Forms of Organization

Some of the non-Board companies engaged in writing automobile insurance belong to one or more of the three organizations known as the Independent Conferences. As previously mentioned these are:

The Independent Automobile and Casualty Insurance Conference (Eastern Conference or I.A.C.I.C.)

The Western Canada Independent Automobile Insurance Conference (Western Conference or W.C.I.A.I.C.)

The Independent Automobile Insurance Conference of British Columbia (B.C. Conference or I.A.I.C.B.C.)

The Eastern Conference exercises jurisdiction over Ontario and Quebec, the Western Conference over Alberta, Saskatchewan and Manitoba, and the B.C. Conference over British Columbia and the Yukon. There is no Conference organization exercising jurisdiction over the Maritime Provinces or Newfoundland.

All three Conferences have similar organizations. None of them has a constitution, by-laws, rules or regulations. In general the officers are honorary and serve without remuneration. There are two exceptions to this, namely, the paid secretaries employed by the Eastern Conference and the B.C. Conference. In general, the only formal requirement for membership appears to be a requirement on the part of the B.C. and Eastern Conferences that members operate their businesses on an agency basis as opposed to a direct writing basis. An additional requirement of membership in the Eastern Conference is that members publish their rate manuals periodically. The Conferences do not set mandatory rates of commission or mandatory premium rates, although, as will be shown below, they recommend certain basic rates of premium and commission to their members. As the evidence shows, however, there are deviations

from the recommended premium rates and very considerable deviation from the recommended rates of commission by the member companies.

In the period 1950-53 the three Conference organizations as a whole had a membership made up as follows:

British companies	6	16.7%
American companies (including 2 Canadian companies which were subsidiaries of or were controlled by American companies)	11	30.6%
Other foreign companies (including 1 Canadian company which was a subsidiary of or was controlled by other foreign companies)	3	8.3%
Canadian companies	16	44.4%
	—	—
	36	100.0%
	—	—

In other words, Canadian companies accounted for a little less than half of the overall membership. If those companies with partial Conference membership and those which belonged to a Conference organization in one or more territories and Board organizations in other territories are included, the percentage of the membership accounted for by Canadian companies is only slightly reduced.

The Eastern Conference had a membership in each of the years 1950-53 inclusive of 32, 33, 34 and 25 companies respectively. The Western Conference in the same years had a membership of 18, 17, 18 and 18 companies. The B.C. Conference in these years had a membership of 27, 31, 28 and 28 companies respectively.

As was indicated in Chapter II, the Conference companies' net premium income in the years 1950-52 amounted to 29.1, 29.2, and 26.5 per cent respectively of the total net premium income from automobile insurance in Canada. The corresponding figure for 1957 is 20.1 per cent.

The three Conferences are completely separate and autonomous, there being no formal affiliation among them. Generally, however, each Conference invites delegates from both of the other Conferences to its Annual Meeting, and, on occasion, a delegate has attended such meetings. The Eastern Conference made arrangements, effective June, 1953, to forward a copy of its Minutes to both of the other Conferences. The role played by Conference organizations in recommending premium rates will be described later in this report.

2. Agents' Commissions

Generally speaking, Conference company commission rates are higher than Board commission rates, frequently at a fixed differential above the Board rates. In some cases, however, they are identical. While there is a certain kind of liaison among the three Conference bodies, each is a completely autonomous organization. In considering agents' commissions, therefore, it is necessary to do so separately with respect to each organization.

(a) Eastern Conference

When asked about the activities of the I.A.C.I.C. in fixing commission rates for producing agents, Mr. C. A. Baines, Assistant Manager for Canada of the Zurich Insurance Company and President of the I.A.C.I.C., at first explicitly denied that the Conference set or prescribed rates of commission for its members. This is shown in the following quotation:

- "Q. The meeting at Montebello held at that time. In the Automobile Conference, of which you are President, does that Conference prescribe the rates of commission for its members?
- A. No.
- Q. What is done in so far as rates of commission are concerned in that Conference?
- A. Actually nothing is done.
- Q. It is a matter entirely for the individual company, is it?
- A. For the individual company.
- Q. Each company fixes its own rates of commission?

A. Correct.

Q. No doubt there is some conference about matters of mutual interest, such as statistical information, forms and that sort of thing of interest to everybody?

A. That is so.

Q. But there is no fixing of commissions?

A. No."

(Hearing, pp. 343-44)

Later on, however, Mr. Baines admitted that there was agreement in 1953 by a majority of members that they would charge certain rates.

"Q. In respect of commissions you said that that is a matter entirely for each company?

A. Yes.

Q. You have in the past agreed on commissions?

A. There was agreement at one time by a majority of the members that they would charge a certain level.

Q. There were one or two dissenters?

A. That was at the time when the rating formula was changed.

Q. That was in 1953?

A. 1953.

Q. Are commissions still discussed at all?

A. No. They have not been discussed.

Q. There has been no discussion since 1953?

A. No."

(Hearing, p. 356)

The records of the Eastern Conference cited in the Director's Statement indicate that in 1947 there was a measure of

agreement among Conference companies with regard to the maximum commissions which would be paid to producing agents. The following is a quotation from the Minutes of the Annual Meeting of September 6, 1950:

"Under the caption 'New Business' Mr. Eddy discussed a Resolution placed on the books of the Conference December 5, 1947, dealing with maximum commissions payable to producing agents. Mr. Eddy understood that the agreement was not being honored by a member company and felt that the matter should be clarified or amended. There were no known cases that could be learned; in consequence it was suggested that Mr. Eddy discuss such case or cases with the alleged company, and if it was then determined that there were violations to the voluntary commitment made by all member companies, the matter be placed before the President and member companies."

Efforts to reach a common basis among Conference companies on both premium rates and commissions are indicated by the Minutes of the meeting held on June 18, 1952 which contain the following:

"The Chair asked that the principle of commission reductions be set down for the guidance of this committee, and that when the problem is next discussed, each company come to the meeting prepared to reach a definite agreement as respects 1953 rate and commission programme.

It was moved 'that the meeting agreed in principle that commission levels should be reduced, and the saving passed along to the public in a widening of the differential in rates'. Seconded and carried."

At a meeting of the Eastern Conference on September 5, 1952, a motion was passed that:

". . . assuming private passenger car rates are increased by not less than 10%, that with the exception of a number [not stipulated] of companies, we reduce commissions of select rates to 22½% and on pleasure classification rates and business rates to 20%, and that if the C.U.A. reduce commissions, we reconsider the problem in the light of the C.U.A. action."

Twelve companies supported the motion, one voted against it, while six companies refrained from voting.

At a meeting of December 8, 1952, commissions were again discussed but no decision was taken.

At a meeting of January 15, 1953, the matter of commissions was again discussed and the Minutes record the following:

"It was moved and seconded that 'maximum commission on automobile business be $17\frac{1}{2}\%$ regardless of the position taken by the Economical Mutual'. Carried, with one dissenting vote by the Canadian Home, as instructions from the Head Office called for a maximum commission of 15%.

It was moved 'that commissions on all commercial vehicles not exceed $17\frac{1}{2}\%$ EXCEPT fleets 15%, inter-urban transports, long haul risks, taxis, now subject to a $7\frac{1}{2}\%$ commission, level to be maintained at $7\frac{1}{2}\%$ '. Seconded and carried."

It would appear that the resolution passed at this meeting to reduce commission rates was, in fact, carried out, for at the meeting of April 8, 1953, the members were polled regarding advice given to their agents on commission reductions. All had so advised their agents with four exceptions: two of these would be operating under a maximum commission rate of 15 per cent; a third had only advised some agents, but in any event its rate would not exceed $17\frac{1}{2}$ per cent; while a fourth proposed to allow 20 per cent on private passenger and commercial business, 15 per cent on fleets, sand and gravel trucks and $7\frac{1}{2}$ per cent on long-haul and taxi risks. In other words, the majority of the companies had made their reductions in commission rates.

Commissions were again discussed at the meeting of May 7, 1953. In view of one company proposing to pay more than the $17\frac{1}{2}$ per cent maximum, two other companies indicated they would feel free to deviate.

Between December 4, 1951 and June 18, 1952 approximately 75 per cent of the members doing business in Ontario and 50 per cent doing business in Quebec were paying commissions at rates ranging between 20 per cent and 25 per cent on private passenger business. The remainder were paying lower rates. On commercial business, some companies paid the same rate as on private passenger business, but in many cases the rates on commercial business were from $2\frac{1}{2}$ per cent to 5 per cent lower. No company appears to have been paying more than 25 per cent on direct business.

Notwithstanding the differences of opinion subsequent to the establishment of new maximum commission rates in 1953, about 85 per cent of the members paid no more than the $17\frac{1}{2}$ per cent maximum on direct business.

The Conference does not appear to have concerned itself with the rate payable to general agents, this being a matter for the individual companies.

Information obtained by the Director shows that between January 15, 1953 and April 8, 1953 all of the member companies of the Eastern Conference had advised their agents on commission reductions, with some exceptions. The evidence given at the hearing shows that these commissions were announced to the agents by the member companies and not by the I.A.C.I.C., as such.

(b) Western Conference

Although the return of information submitted by the Secretary-Treasurer of this Conference claimed that only basic rates of commissions were recommended, that members might exercise independent decisions as to the suggested commissions, and that the Conference had no effective control over the action of members, it would appear that maximum rates of commissions were the subject of agreement among some of the Conference members. For example, the Minutes of a semi-annual meeting of April 17-18, 1950 contained the following:

"COMMISSION AGREEMENT

It was moved by Mr. MacNally seconded by Mr. Lawrence and carried that the understanding re commissions payable to agents be reaffirmed at not over:

20% on Private Passenger and Non-Ownership Policies
15% on all other except Public Service Vehicles
7½% on Public Service Vehicles

Carried with two Dissenting votes, one from Mr. Cameron of Northwest Casualty who said he would require direction from his company before assenting and one from Mr. Parsons who asserted his independence in voting, due to the fact that he was not prepared to assent at the moment, both dissensions being directed to commissions on commercial vehicles PRIVATELY owned, used for private purposes only."

Approximately one-third of the members wrote only through general agents who, presumably, appointed their own local agents. The matter of commission rates payable to general agents does not appear to have been the subject of discussion at Conference meetings nor does there appear to have been any understanding among members in this regard.

Of the remaining companies, according to returns of information received by the Director, during the period 1950-52 about 75 per cent paid commissions ranging as high as 25 per cent on private passenger business, while the remaining 25 per cent paid no higher than 20 per cent. On commercial business about 75 per cent paid between 15 per cent and 25 per cent and the remaining 25 per cent of the members paid no more than 15 per cent.

Further evidence of agreement among members of the Western Conference on rates of commission is found in the Minutes of the Annual Meeting held on February 23-25, 1953, at which the subject of commission rates was discussed. The following occurs in the Minutes of that meeting:

". . .

It was MOVED and SECONDED that a secret ballot be held, polling the members on whether or not they wish to adopt the Non-Conference rate of commission. Majority decision to rule the Conference.

CARRIED

Saskatchewan Mutual then pointed out that they had a deviation filed allowing them to pay certain agents an extra commission of up to five percent. These are certain recording agents, only.

They agreed that if they could be allowed to maintain this deviation, they would undertake to file verbally with the Chairman, a list of agents who were obtaining this extra commission and any member who approached the Chairman could be informed of whether or not a certain agent was on this list, and if so, would have equal privileges in the office where the Saskatchewan Mutual was paying the extra commission. The Saskatchewan Mutual agreed that they would not extend this deviation to any new agencies.

. . .

The ballot was taken and the Conference was in favour of adopting the Non-Conference rate of commission.

. . .

It was MOVED and SECONDED that the commission rate be effective April 1st, 1953, on new and renewal business.

CARRIED"

The majority of agents writing through direct agents revised their commission rates effective April 1, 1953. Approximately half of the members changed their rates to 15 per cent on private passenger business, most companies having a deviation of 5 per cent in respect of certain business in Saskatchewan. On commercial business the 15 per cent maximum rate remained unchanged at April 1, 1953. But while previously about one-quarter of the members did not exceed the 15 per cent maximum, now over half did not exceed it, although three companies had a 5 per cent deviation on farm trucks in Saskatchewan. The commission rates of the remaining companies exceeding the maximum ranged between 15 per cent and 20 per cent.

(c) B.C. Conference

The return of information submitted by the Vice-Chairman of the Independent Automobile Insurance Conference of British Columbia stated that the Conference does not concern itself with agency appointments or commissions. The Minutes do not record any agreement or understanding with respect to maximum commissions; in fact they indicate the reverse, if anything, as, for example, this extract from the Minutes of the meeting of October 11, 1951:

"Commissions - A short discussion took place in regard to the commission question. The meeting was polled by a show of hands to see how many were in favour of adopting a standard commission rate but as unanimity could not be secured, no further action was taken."

Some of the companies in the Conference wrote through general agents, some through local agents, and some through both general and local agents. In 1950 and 1951 local agents acting for approximately 80 per cent of the companies were paid rates of the order of 25-30 per cent on private passenger business. Over half of the local agents received rates of the order of 25-30 per cent on commercial business.

In 1952 some of the Conference companies reduced their rates to a maximum of $22\frac{1}{2}$ per cent on private passenger business and $17\frac{1}{2}$ per cent on commercial business. In 1952 the maximum rates of approximately one-half of the members were not more than $22\frac{1}{2}$ per cent on private passenger business and those of about two-thirds of the members were not more than 20 per cent on commercial business.

On or about April 1, 1953 a number of the Conference companies reduced their rates and by May 1, 1953 over 90 per cent of the member companies had maximum direct commission rates no higher than $17\frac{1}{2}$ per cent on both classes of business, the maximum rates of several being no higher than 15 per cent, that is, no higher than the B.C.U.A. rates for these classes.

CHAPTER V

COLLABORATION BETWEEN THE BOARD AND CONFERENCE ORGANIZATIONS

There has been both formal and informal collaboration between the Board and Conference companies. The degree of collaboration has varied; in some periods there are indications of very active collaboration, while in others there are few or no indications of such collaboration. The extent of the association between Board and Conference companies has tended to reflect the extent to which changes in practices or conditions in the automobile insurance business have been under active consideration. With one exception, this collaboration has been between Board and Conference companies in Central and Western Canada, there being no Conference body having jurisdiction over the Maritimes.

1. Collaboration in Ontario and Quebec

In Ontario and Quebec formal collaboration of the C.U.A. and the Eastern Conference was carried on by means of the Automobile Collaboration Committee, formed in 1946. It consisted of six members of the C.U.A. and six members of the Eastern Conference appointed to discuss all matters of mutual interest. The Committee had no power to act but only the power to report back to or to make recommendations to the C.U.A. and the Eastern Conference. In the period 1947-52 inclusive, the Committee held 13 meetings, there having been no meetings in either 1950 or 1951. The Committee considered a very wide range of subjects, described in the return of information made by the Manager of the Dominion Board as follows:

"The minutes of the Committee disclose that the subjects discussed were consonant with the objects for which the Committee was formed:

- | | |
|------|---------------------------------|
| I. | Legislation generally |
| II. | Government Insurance Fund |
| III. | Compulsory Automobile Insurance |
| IV. | Unsatisfied Judgment Fund |

- V. Indemnification for Victims of 'Hit and Run' Accidents
- VI. Pools for Sub-Standard Risks - generally to meet need of market where compulsory insurance applies, i.e. taxis and public vehicles.
- VII. Statistics - Statistical Exhibit
 - i. Unallocated Expense Cost
 - ii. Acquisition Cost
 - iii. Expense Ratio Factor
 - vi. Loss Costs
- VIII. Financial responsibility Laws
- IX. Assigned Risk Plans
- X. No Claims Bonus
- XI. Increased Limit Tables
- XII. Solvency of Insurers
- XIII. Public Safety Extension Course, University of Toronto
- XIV. Rating Programme Publicity
- XV. Public Relations
- XVI. Definitions
- XVII. Sub-Standard Risks

Besides having consultations with Provincial Government authorities, the Committee or its members met with representatives of Agency Bodies and of Provincial Motor Leagues as representatives of the buyers of insurance to consider the problems arising out of a trend toward greater claim frequency, higher claim cost, and the resultant upward trend of premium rates."

In the same return of information the termination of the Committee is referred to as follows:

"In the spring of 1953, the Committee was asked to report on the work it had done and the need for its continuance. The Committee reported to a meeting of the Council held May 7th, 1953, as follows: -

- '1. This Committee was established in 1946, and normally meets once in the Spring and once in the Fall of the year.
- 2. [Sets out the then membership of the Committee.]
- 3. The Committee deals with matters of common interest concerning legislation, policy form, statistics, practices in the public interest such as No Claims Bonuses, Assigned Risk Plans, and

interpretation of Forms. No consideration is at any time given to questions of rate, commission* or any factor in the hurly-burly [of] competition.

4. This is a small Committee of Company Managers who are perhaps in a better position to get things done quickly than would be the Committee of Underwriters or any other medium. The Committee has not power to act, but only to send back recommendations to the Canadian Underwriters' Association and the Independent Conference.
5. Your Sub-Committee does not think the name 'Collaboration Committee' well chosen. In that the functions of the Committee all fall either into the category of legislation or into public relations, it is recommended that the Automobile Committee of the "All Canada" take over the duties previously handled by the Automobile Collaboration Committee.'

The Council agreed that conditions that led to its formation had so changed that the Committee would not be re-appointed following the Annual Meeting called later that month, and no such Committee now exists.

- * Subject to item 'Statistics' shown under heading above 'Subjects Considered by the Committee'."

It will be noted from the list of subjects given above that the item "Statistics" embraced the Statistical Exhibit and the factors related to the loss-cost ratio which has been the basis of the determination of premium rates.

At an Eastern Conference meeting of June 15-18, 1953 the question of further collaboration with the C.U.A. was considered in the light of the proposal that the All Canada Insurance Federation should take over the functions previously handled by the Collaboration Committee. The minutes of the meeting include the following:

"Whether we should collaborate with the C.U.A. or not was something the members felt might be deferred until the enlarged [Conference] Rating Committee can study the problem of consultation with the C.U.A. in matters of rate."

The return of information made by the President of the Eastern Conference states:

". . . The acceptance of any recommendation of this Committee by the Conference was dictated by considerations based on independent business judgment free from any compulsion or any prior agreement as to a common course of action."

The manner in which discussions were carried on between Board and Conference companies and the nature of the collaboration are indicated in the minutes of meetings to which reference is now made.

The Minutes of a meeting of the Collaboration Committee, held on December 4, 1952, at Toronto, set out the following:

"Item 87. Statistics:

. . .

(b) Expense Ratio Factor: Copies of the report of the Dominion Board Automobile Committee . . . dated May 9, 1952, were distributed to the Committee. Mr. Ham advised that the Dominion Board had adopted the 63%, 37% split in lieu of 53%, 47%, . . . and . . . a reduction in Agents' commission of 5% had been agreed upon. After a lively discussion the Independent Automobile & Casualty Insurance Conference Members of this Committee advised that they would take this problem and the action decided upon by the Dominion Board, back to their parent body to seek its approval. Mr. Ham expressed a desire that some discussion on the modification of Agents' commission by 5% be had. Mr. Parkin stated that if the discussion on commission was in order then rates also must be discussed. Rates were discussed in a general way and after the approval of the Chairman of the Automobile Branch of the Dominion Board was obtained, the Independent Automobile & Casualty Insurance Conference Members were given the basis of the proposed C.U.A. rate amendments."

At the next Conference meeting on December 8, 1952, a Conference representative on the Committee outlined the general C.U.A. program which was to become effective April 1, 1953. The Minutes indicate that the Rating Committee distributed the table showing examples of the probable effect of the new C.U.A. rating program on the 1952 C.U.A. rates, together with Conference rates. One of the items discussed was the introduction of a no-claims bonus of 20 per cent on third-party liability rates, a plan which the C.U.A. had said it intended to introduce. As members of the Conference believed that the rates suggested by the C.U.A. would be inadequate -

" . . . It was moved and seconded that 'we approach the C.U.A., approving the principle of a No Claims Bonus plan, and that an effort be made to confer with the C.U.A. to increase the rates applicable to the Select A 1 class'. Carried, with 2 dissenting votes."

These discussions with the representatives of the C.U.A. were referred to in the Minutes of the following meeting of the Conference held on January 15, 1953, from which the following excerpts are taken:

"The report of the committee of Messrs. Hall, Spry, Humphrey, MacDonald and Wittick, who met with the C.U.A., was discussed. Mr. Hall, spokesman, pointed out that our group had voiced dissatisfaction over the proposed rates, due to their inadequacy. The C.U.A. were advised that the I.A.C.I.C. would maintain present differentials in rate, and that, with one exception, maximum rates of commission on private passenger car rates would be $17\frac{1}{2}\%$. Our committee reported that the excess limit table was to be increased, and that the C.U.A. were again meeting to discuss the possibility of producing more adequate rates.

. . . It was moved that the Rating Committee study the proposed rules with respect to the application of a No Claims Bonus plan, and be empowered to deal further with this item in negotiations with the C.U.A. Seconded and carried."

The further discussions with the C.U.A. were reported in the Minutes of the next Conference meeting held on January 27, 1953, from which the following excerpt is taken:

" . . . Mr. Humphrey stated he had contacted Mr. Kenny of the C.U.A., who admitted their own rating committee were opposed 7 to 3 to the C.U.A. programme as applied to Third Party Liability rates in private passenger rating classifications 1 and 2. Mr. Humphrey passed along our resolution on January 15, 1953, meeting with respect to commissions, and suggested that if the indicated adjustments were not made by the C.U.A., our resolution and agreement might not hold. At a later C.U.A. meeting, it transpired that no increase in rate was to be made, and we were informed the reason for no change was the inadvisability due to current problems with respect to the Alberta automobile situation.[1]

[1] [About this time there was some agitation in Alberta for compulsory government insurance and proposals had been advanced for a governmental inquiry into the automobile insurance business.]

. . . . The meeting empowered the rating committee to work out the details [of private passenger car classifications] in collaboration with the C.U.A."

The Minutes of the Conference meeting of February 2, 1953, contained the following:

"The Rating Committee were authorized to inform the C.U.A. of our rating programme."

The Council of the Dominion Board at a meeting held May 7, 1953, decided that the Collaboration Committee would not be re-appointed following the Annual Meeting called later that month.

Apart from the activities of the Collaboration Committee there was collaboration between the C.U.A. and the Eastern Conference, which was carried on through the medium of joint committees or informally by discussions between the representatives of the two organizations. The following extracts from Minutes of meetings indicate the nature of this collaboration:

"Territorial changes were outlined in detail - the meeting accepted the proposed changes in principle and recommended that the Committee proceed to finalize the changes with the C.U.A. Territorial Committee."

(Conference Minutes of March 16, 1950)

"(B) The C.U.A. sub-committee are also recommending a surcharge to all cases where the named insured is 21 years of age or under. The surcharge of 20% is to apply on either the Pleasure or Business rate, whichever applies, and they recommend that a separate statistical classification be set up for the gathering of experience data. The suggestion met with the approval of the meeting."

(Conference Minutes of September 6, 1950)

"Rate sheets were distributed to members, these have been finalized by the C.U.A. pending approval of the I.A.C.I.C."

. . . .

It was recommended that the differential to the C.U.A.

rates be confined to not more than \$2.00 on rates of \$75.00 or under and not more than \$4.00 on rates over \$100.00. Mr. MacDonald, Chairman of the Rating Committee suggested that a new schedule of commercial rates be prepared. This was done and later given to each member attending.

Collision, Fire and Theft rates, as in the past were prepared at full C.U.A. Rates."

(Conference Minutes of November
2, 1950)

"Mr. MacDonald, chairman of the rating committee, distributed data on preliminary proposals for rating Comprehensive coverage. He remarked on the very fine co-operation his committee enjoyed with the C.U.A. . . ."

(Conference Minutes of September
13, 1951)

"Mr. Wittick briefly outlined developments in the preparation of rates for 1952. The full co-operation we have received from the C.U.A. body has been excellent.

. . .

Classification on private passenger cars and trucks will be amended to show 1946 and earlier, and 1947 and later. Some of the members felt that such a move was rather drastic and, in consequence, it was moved and seconded that '1946 cars be left in their present classification, and that the C.U.A. be so advised'. Passed. It was decided that [if] the C.U.A. do not accept this recommendation, we go along with their programme. (NOTE: It is now learned that 1946 models will be classed the same as 1942 and earlier).

(Conference Minutes of October 16,
1951)

At the end of these Minutes under the heading "Corrections", the following appears:

"Item 6 - Strike out notation - The C.U.A. accepted our recommendation and the 1946 models remain unchanged."

The Minutes of the meeting of October 16, 1951 continue:

"The recommendations for changes in qualification for Pleasure rating was not accepted by the C.U.A. . . .

Mr. Wittick telephoned the C.U.A. representative who advised that their rating committee would welcome any specific recommendations. (NOTE: The C.U.A. did not accept the Conference recommendations)

It was moved and seconded 'that the rates propounded by the rating committee, as amended, be accepted by the Conference and be recommended to the C.U.A. as acceptable, and that further we maintain the same differential'. The members accepted the motion, with the Gore District not voting. They have since advised that for the present year they will be going along with this programme.

It was moved that 'if the recommendation of the rating committee was not acceptable to the C.U.A., the Conference members will accept the original rates, or any portion of increase arrived at'. Passed.

If the counter proposals of the rating committee in Third Party adjustment are not accepted by the C.U.A., the rating committee are to recommend an increase by 5% in the Collision rates as distributed

e.g.	\$50 ded. Collision		
	Class A 1	Class A	Class B
Territory A	No Change	+15%	+8%

(NOTE: This, likewise, was not accepted by the C.U.A.)

Due to the broadened policy, the members felt it unwise to lower the Fire and Theft rates. It was moved that 'we encourage the C.U.A. to leave the Fire and Theft rates unchanged, but failing so to do, that we accept the reduction'. Passed. (NOTE: The C.U.A. are reducing Fire and Theft rates)"

In so far as commercial auto rates were concerned the Conference made some changes similar to the C.U.A., while in others the proposed changes by the Conference were rejected or not followed by the C.U.A. The Minutes of the Conference meeting of October 16, 1951, included the following, which illustrates the policy of consciously setting rates at a differential from the C.U.A. rates:

"On a motion, moved and seconded, 'the members accept the commercial programme as outlined, and we maintain the present differentials'. Passed."

The maintenance of differentials from C.U.A. commercial rates was re-affirmed in the meeting of the Conference held December 8, 1952:

"It was moved and seconded that 'the Conference maintain the present dollar differential to C.U.A. commercial rates.' Carried."

At the time the 1953 rating program was under discussion there was again close collaboration between the C.U.A. and the Conference (also quoted on p. 95).

"The report of the committee of Messrs. Hall, Spry, Humphrey, MacDonald and Wittick, who met with the C.U.A., was discussed. Mr. Hall, Spokesman, pointed out that our group had voiced dissatisfaction over the proposed rates, due to their inadequacy. The C.U.A. were advised that the I.A.C.I.C. would maintain present differentials in rate, . . . "

(Conference Minutes of January
15, 1953)

At its meeting of February 2, 1953, the Conference approved the 1953 rating program, continuing to a considerable degree the policy of maintaining differentials from the C.U.A. rates.

". . . The collision, fire and theft rates, private passenger cars, are full Board except the first class, 1A, and farmers collision for Territory E.

. . .

The Rating Committee were authorized to inform the C.U.A. of our rating programme."

(Conference Minutes of February
2, 1953)

The testimony of Mr. C.A. Baines, Assistant Manager for Canada of the Zurich Insurance Company, and President of the I.A.C.I.C., who was a witness before the Commission, may also be mentioned. Mr. Baines gave evidence that there had been conversations between members representing the Eastern

Conference and members connected with the C.U.A., that these conversations usually occurred every year approximately around the time the statistical report came out. He said that the matter of rates is included in the conversations with the C.U.A. but in recent years the matter of agents' commissions has not been discussed. The circumstances surrounding these annual conversations are indicated in the following portions of Mr. Baines' evidence:

"BY MR. SCOTT:

Q. What happens after one of these annual conversations in your Conference?

A. In our Conference?

Q. Yes?

A. The procedure is those who are engaged in those conversations report back to the executive of the Conference who in turn report their findings as far as recommendations of rates are concerned to the Conference at large.

Q. In the information which your representatives report back, as you have just described, would that be the rates that are going to be charged by the C.U.A.?

A. Not necessarily.

Q. Are they sometimes?

A. Sometimes that knowledge is available, sometimes it is not.

Q. I suggest to you that it is usually available?

A. I think it usually is.

Q. One of the purposes of the Conference, or at least of the conversations, I suggest, is to get that information?

A. Yes.

. . .

Q. . . . Do you know from hearing these reports from your people, or from your organization or any other

source; do you know whether or not the scale of rates is urged on your members by the C.U.A. in those conversations?

A. I would not say urged on us, no.

Q. Are they recommended to you by the C.U.A.?

A. No.

Q. Well, you have said what you would not do. What would you do?

A. I would say that, generally speaking, there is some difference of opinion as to what they should be.

Q. You mean even among members of the C.U.A.?

A. No, as between the two bodies. Generally speaking, it has been during the past few years that our recommendations have been that the rates be a little higher maybe.

. . ."

(Hearing, pp. 349-51)

The relationship between the premium rates of Conference companies and those of the C.U.A. is described in the following part of Mr. Baines' evidence in which reference is also made to the question of agents' commissions:

"BY MR. QUINLAN:

Q. Mr. Baines, in your discussion of matter of rates with the C.U.A., regardless of whether or not you undertake to observe specific rates, am I correct in stating it is pretty well the understanding that there will be a follow the leader policy?

A. That has been the history over the past few years, yes.

Q. Just what do you mean by the past few years?

A. I think it is true to say that if we go back a considerable number of years there may be greater deviation than existed over the past few years.

- Q. You have on occasion advised the C.U.A. that you will maintain a particular differential?
- A. We may have indicated that that is our recommendation.
- Q. It has been the recommendation of meetings of your members to so advise the C.U.A., is that not correct?
- A. Yes.
- Q. As far as rating material is concerned, you obtain information from the C.U.A., do you? Do they make rating material available to you?
- A. By rating material do you mean the final rates?
- Q. What they propose to charge?
- A. In general terms, yes.
- Q. There has been no question of your obtaining that illegally, has there?
- A. No, I do not think so.
- Q. In respect of commissions you said that that is a matter entirely for each company?
- A. Yes.
- Q. You have in the past agreed on commissions?
- A. There was agreement at one time by a majority of the members that they would charge a certain level.
- Q. There were one or two dissenters?
- A. That was at the time when the rating formula was changed.
- Q. That was in 1953?
- A. 1953.
- Q. Are commissions still discussed at all?
- A. No, they have not been discussed.
- Q. There has been no discussion since 1953?

A. No.

Q. There has been no change in the rating formula since 1953?

A. No."

(Hearing, pp. 355-56)

The Eastern Conference brief submitted to the Commission refers to collaboration with the C.U.A. since the disbanding of the Collaboration Committee as follows:

"COLLABORATION WITH C.U.A.

(1) (a) The Collaboration Committee of the Conference having been disbanded on May 7, 1953, the only contacts made since were by a member of the Conference Research Committee, who at the time of the release of the Government Statistics (Green Book) would discuss with a member of the C.U.A. Rating Committee the Conference's interpretation of the statistics and general view on the situation.

(b) Some agreement would generally be reached as to territorial divisions, car groupings and other basic classifications.

(c) Other matters discussed would be dictated by the nature of the problems facing the industry at the time.

. . .

(d) The Conference representative had no power to commit the Conference Companies but merely reported back to the Research Committee which in turn made recommendations to the members, which recommendations were not binding on the members."

In another part of its brief the Eastern Conference indicated that in 1957 the Conference companies took the initiative in increasing premium rates:

"For the past few years it has been the opinion of the Conference Research Committee that the C.U.A. rates have been set at an inadequate level. This became so apparent in 1957 that midway through that year, the Conference companies increased their rates above the C.U.A. About one month after the publishing of the new Conference rates the C.U.A. made an upward revision."

Another reference to continued collaboration between the C.U.A. and the Eastern Conference is found in the "Annual Report of Research Committee", part of the Minutes of the Annual Meeting of the Eastern Conference, June 16-19, 1958:

"This year, for the first time in many years, we were able to include a trend factor along with the indicated rate changes. The trend factor amounted to 5 per cent and it is doubtful at this time if this percentage was high enough. However, it was a step in the right direction and also, for the first time in many years, we were able to work with the Canadian Underwriters' Association in arriving at a programme which looked at the Green Book figures in a much more realistic way than in past years."

(Exhibit H-9)

2. Collaboration in the Prairie Provinces

Considerable collaboration occurred between the W.C.I.U.A. and the Western Conference. On the part of the W.C.I.U.A. collaboration was carried on principally through a sub-committee of the Automobile Branch Rating Committee described as "Collaboration with Independent Conference". This sub-committee was appointed in each of the years 1950 to 1952 inclusive. It does not appear that any formal committee or sub-committee was established by the Western Conference for purposes of collaboration with the W.C.I.U.A., although on three occasions representatives of the Conference held a joint meeting with representatives of the Association.

The return of information submitted by the Manager of the W.C.I.U.A. contains a statement of the reasons for the meetings between the Western Conference and the W.C.I.U.A. The following extracts are pertinent:

"All Insurers are required by the Provinces to file statistical information with the Statistical Agency. This requires agreement between all insurers on classification, territories, and like matters.

As explained elsewhere the Statistical Exhibit is first studied by a Committee of the Dominion Board which reports and makes recommendations each year as to the Rating Programme for the ensuing year.

The program besides dealing with adjustment in rates invariably includes recommendations for changes in statistical territories and for changes in classification and other matters, and insurers have to file on a common basis and therefore have to be informed on these points.

. . .

The question of advising each other as to the programme for the ensuing year - The programme is only disclosed after it has been decided upon and in the process of being prepared for general publication. The programme of necessity becomes public knowledge as soon as it becomes effective through issue of rating manuals to agents.

. . ."

The return submitted by the Secretary-Treasurer of the Western Conference stated that informal discussions had taken place between members of the Conference and members of the Association for informative purposes only.

The nature of the collaboration between the W.C.I.U.A. and the Western Conference is illustrated by references in the Minutes of joint meetings and of the respective organizations, from which the following extracts are taken:

"The Chairman explained that this meeting had been called for the purpose of exchanging views on matters of mutual interest with the object of obtaining as between all insurers as large a degree of uniformity as possible on rating and other Automobile Insurance matters. He further stated that in view of conditions that presently exist in the Automobile Insurance Field, it was his opinion that the industry as a whole should maintain as uniform a policy as possible because independent action by either a Company, a group or a Conference of Companies could have very unfavorable affects in creating confusion in the insurance buyer's minds [sic]. Such confusion if it became widespread enough could quite easily be a serious factor in encouraging Governments to introduce State Automobile Insurance schemes.

No Claims Bonus.

Representatives of the Independent Companies were advised that the Association Companies had tentatively decided upon a rate adjustment program for 1951 but such rate Adjustment Program in respect to private passenger

automobiles did not take into consideration any provision for granting refunds for safe driving by the adoption of a No Claims Bonus plan. The Chairman advised that the Association Companies generally did not favor the re-introducing of the No Claims Bonus scheme and expressed the hope that the Independent Companies as a Conference would therefore not adopt such a plan. If, however, the Independent Conference did introduce a No Claims Bonus plan then the Association Companies would have to reconsider the Program that had been decided upon. The representatives of the Independent Companies advised that they were unable to express any definite view as to what action their Companies would take on the matter and that the decision would be made at the meeting of their Conference to be held in Edmonton November 27. They agreed however, to place the views of the Association Companies before the Conference meeting at that time.

. . .

Rating Program 1951

The representatives of the Independent Conference were then furnished with a summarization of the 1951 Rating Program as proposed by the Association Companies. It was pointed out that it was the intention of Tariff Companies to include the Town of Flin Flon in with the city of Brandon effective January 1 and similar action by the Independent Companies was strongly urged. Attention was also drawn to the special rating that was to be set up for vehicles engaged in oil drilling, exploration and seismograph operations, the support of which was also asked.

. . .

The Chairman thanked the representatives of the Independent Conference for their attendance and expressed the hope that this meeting would be the forerunner of closer relationships between the two organizations in order that the interests of the public might be best served."

(Minutes of meeting of Association
and Conference representatives,
November 16, 1950)

"No Claims Bonus

The Secretary reported that official advice had been received that the Independent Conference had decided against adopting the No Claims Bonus plan as part of their 1951 rating program

but that as a result the Conference had lost as Members the Wawanesa Mutual Insurance Co. and the Western Union Insurance Co."

(Minutes of meeting of W.C.I.U.A.
Executive Committee and
Automobile Branch Rating
Committee, December 4, 1950)

"COLLABORATION WITH INDEPENDENT CONFERENCE

The matter of collaboration with the Independent Conference on the 1952 Rating was considered. It was decided that a meeting be arranged to discuss respective programs and that Messrs. Ross, Boyd, Hurst and Budden represent the Association."

(Minutes of meeting of W.C.I.U.A.
Executive Committee and Automobile
Branch Rating Committee, October 31,
1951)

"Mr. Plante advised the meeting that the Conference had now been approached by the Non-Conference organization (W.C.I.U.A.) with a view to an exchange of information on ratings proposed by the two bodies. Moved and seconded that the Rating Committee be given power to make any alterations to the rates proposed if it was felt necessary after this meeting. CARRIED.

. . .

The Rating Committee was directed to contact the Non-Conference representatives and were authorized to make what changes they felt necessary as a result of such a discussion."

(Minutes of meeting of Western
Conference, November 5-7, 1951)

"Rating Programmes 1952

An exchange of material in respect to the 1952 rating programmes took place and representatives of each body were instructed to collaborate further on any other matters they deemed necessary."

(Minutes of meeting of Association
and Conference representatives,
November 12, 1951)

"Collaboration with Independent Conference

It was decided that following the practise of other years a meeting be held with representatives of the Independent Conference for the purpose of exchanging such information as may be deemed advisable with regard to the 1953 Rating Program. The Chairman, Manager and Secretary and one Committee Member to be appointed, to represent the Association."

(Minutes of meeting of W.C.I.U.A.
Automobile Branch Rating Committee,
January 30, 1953)

"In accordance with the decision of the Automobile Rating Committee, representatives of the Association met with representatives of the Independent Conference and exchanged views and information on the 1953 Automobile Rating Programme.

The spokesman for the Independent Conference advised that actually their organization had not yet held its rating meeting and consequently they could not advise us as to their final decisions.

. . .

INCREASED LIMITS

The matter of increasing the charges for excess limits was discussed and the Independent representatives agreed to recommend an increase similar to that being adopted by the Association.

PREFERRED RISK RATING PLAN

The Preferred Risk Rating Plan was discussed at considerable length. Again the Independent representatives did not know what would finally be adopted, but they felt that undoubtedly some plan of this type would likely be approved in order to meet competition.

REVISED RATING GROUPS - PHYSICAL DAMAGE

The same remarks as applying to the Preferred Risk Rating Plan also pertain to this subject.

RATE ADJUSTMENTS

The rate adjustments to be adopted by the Association and the experience as indicated by the Statistical Exhibit were fully discussed. The representatives of the Independent Conference submitted the attached schedule of rate changes which they proposed recommending to the meeting of their Conference to be held shortly. While there would undoubtedly be some changes from this schedule they felt that it would be adopted substantially as is."

(Minutes of meeting of Association
and Conference representatives,
February 10, 1953)

"REPORT OF MANUAL & RATING COMMITTEE

. . .

It was MOVED and SECONDED that the classification for Third Party Liability ratings for that group of risks where the principal operator or owner is under twenty-five years of age, be written at full C.U.A. rate. CARRIED

. . .

It was MOVED and SECONDED that the Conference adopt the Non-Conference Commercial rates. CARRIED

. . .

It was MOVED and SECONDED that the Garage rates would be the same as the Non-Conference revised Garage rates. CARRIED

. . .

The question of what the revised commission scale should be was then discussed.

It was pointed out that the C.U.A. had adopted a loss cost factor of sixty-three percent on both Private Passenger and Commercial business.

The rating Committee was left with only two courses. One was to recommend that the rates be higher than the Non-Conference rates and the commission schedule remain unchanged.

The second course was that the commission be reduced and the rates be competitive with those of the Non-Conference companies.

On the question of the breakdown of the premium dollar, it is noted that the loss factor is now sixty-three percent. Premium taxes, license fees, statistical service fees, and Assigned Risk charges amount to three percent and unallocated claims expense amounts to six percent. Thus we have a balance of twenty-eight percent, which is providing fifteen percent for acquisition cost, thirteen percent for other overhead and profit.

There is, therefore, little margin to allow any extra commission.

It was MOVED and SECONDED that a secret ballot be held, polling the members on whether or not they wish to adopt the non-Conference rate of commission. Majority decision to rule the Conference.

CARRIED

. . .

The ballot was taken and the Conference was in favor of adopting the Non-Conference rate of commission."

(Minutes of meeting of Western
Conference, February 23-25, 1953)

3. Collaboration in British Columbia

The return of information submitted by the Vice-Chairman of the British Columbia Conference described the collaboration between his own organization and the B.C.U.A. as follows:

"Our Public Relations, Legislation and Liaison Committee will as required discuss common industry problems with the B.C.U.A.

These discussions have covered matters such as the following:

- (a) Motor Vehicle Department search of Financial Responsibility Certificates;
- (b) the signature on Preferred Class Rating Statements;
- (c) Public Relations;

- (d) operation of the Assigned Risk Plan; and
- (e) changes in the historical classification groups such as vehicle use and territory including their definitions. For example, the recent change from three groups to five for Private Passenger Vehicles. These discussions are designed to achieve consistency in reporting statistics to the Statistical Agency and do not cover actual rates to be charged. There is no agreement on any rates."

In his return of information the Manager of B.C.U.A. stated that:

"... when special circumstances warrant we have on occasion in public interest or at the request of the Superintendent of Insurance, conferred with the Independent Automobile Insurance Conference (British Columbia) on matters of principles, but not on matters of rating or rate levels."

The British Columbia Conference's Public Relations, Legislation and Liaison Committee seems to have been the principal committee concerned with relations with Board companies. In the case of the B.C.U.A. this subject does not appear to have been assigned to any specific committee. The information obtained by the Director does not indicate any formal meetings between the two organizations as in other areas, but discussions between representatives appear to have taken place informally. Some matters pertaining to the industry as a whole, rather than to the province only, such as the question of whether application forms should be signed by the insured personally, have been referred to the Automobile Collaboration Committee mentioned earlier rather than dealt with at the provincial level.

The following excerpts from Conference Minutes give some indication of the extent of collaboration between Conference and Board companies in British Columbia:

"The question of changing our increased limits table was also one on which it was felt desirable to have the co-operation of all companies. Regularly moved and seconded that we continue to use our present table, but that we approach the Board and endeavour to have our present table increased by 50% (one office dissenting). CARRIED."

(Minutes of meeting of B.C.
Conference, December 14, 1950)

"Automobile Experience Statistics - The Rating Committee reported that the Committee met on October 10th last and made a study of the Green Sheets Experience Statistics. He then pointed out the percentage increases and indicated rates on a Board level for the different private passenger classifications in the rating territories. Considerable discussion took place in this regard, some Company representatives feeling that rate increases should be put into effect right away but others felt we should wait and see what action the Board office takes. The suggestion was made that the Liaison Committee negotiate with the Board office with a view to securing their co-operation in this matter of rates. It was finally moved and seconded that the matter be referred to the Rating Committee for a report at a special meeting to be called as to what rates and surcharges should be made. After approval by the Conference of such rates, the question to be referred to the Liaison Committee who will approach the Board officials with a view to securing action in regard thereto."

(Minutes of meeting of B.C. Conference, October 11, 1951)

In neither of these cases do the Minutes of subsequent meetings contain any reference to the outcome of the proposed discussions with the B.C.U.A. officials.

The following references to collaboration appear in 1953:

"Your committee has co-operated with the B.C.U.A. in rating matters and cordial relations obtained throughout discussions. The work of the rating committee chairman Mr. E. G. Peake in this connection has been most valuable."

(Report of Chairman of Public Relations, Legislative and Liaison Committee to Annual Meeting of B.C. Conference, May 1, 1953)

"The Meeting opened with the Chairman of the Rating Committee outlining a discussion he held with the Board's Representative, and a general discussion of the situation regarding the 20% No Claim Reduction on Class 1 Collision Rates followed. It was moved and seconded that the Independent Automobile Conference follow in principle the Board's Collision Reduction Plan. This motion was

passed, with Mr. H. Winters of the General of America and Mr. L. Stevens of the Federation opposed."

(Minutes of meeting of B.C.
Conference, May 25, 1953)

The following references in the Minutes indicate that the B.C. Conference had secured information in regard to prospective changes in Board rates:

" . . . The Chairman of the Rating Committee was then called on for his report. . . . The Chairman pointed out that his committee were somewhat handicapped by the fact that while the Board had indicated they intended to make certain changes in base ratings, these did not now seem too certain and it appeared now that the majority of changes would be due to the application of the new formula rather than through the use of percentage increases or decreases. The Rating Chairman then went through each territory and from the latest information available, it would appear the Board do not contemplate any percentage increase in P.L. and P.D. in any of the four territories and collision is to be increased 10% in territory 10 only. Fire and Theft remains unchanged in all territories. . . ."

(Minutes of meeting of B.C. Conference, December 14, 1950)

"Rates - The Chairman of the Rating Committee reported that no immediate adjustment of rates for 1953 would be made at this time. He stated that the Dominion Board of Insurance Underwriters had agreed in principle to a plan which would offer a 20% 'No Accident Discount' on 1953 rates for Public Liability and Property Damage Insurance to drivers in the A-1 Classification. There also would possibly be a slight increase in Collision, Fire and Theft and Comprehensive premiums."

(Minutes of meeting of B.C. Conference, December 11, 1952)

The method of establishing rates by reference to the Board premium rates and as differentials from the Board rates is illustrated in the following excerpt from the Minutes of the meeting of December 14, 1950:

"... The Rating Committee recommended that we increase the charge for Passenger Hazard to \$3.00, and suggested that we as a Conference give consideration to increasing our increased limits table. After a general discussion on the passenger rates, it was regularly moved and seconded that our differential in Territory 7 be not more than 5% on P.L. & P.D. and collision, in Territories 8 and 9 not more than $7\frac{1}{2}\%$ and Territory 10 not more than $7\frac{1}{2}\%$ and that the Rating Committee be empowered to reduce this to 5% if they deemed necessary. Fire and Theft coverages are not to be subject to any differential. CARRIED (Two offices dissenting on P.L. & P.D. minimum applicable to A1 Class in Territory 7).

It was not felt that any change should be made in Passenger Hazard unless all companies were in agreement. Regularly moved and seconded that the Passenger Hazard premium should be left unchanged unless the Board act on this. (Three offices dissenting). CARRIED."

(Minutes of Meeting of B.C.
Conference, December 14, 1950)

The Minutes of a meeting of the B.C. Conference on October 11, 1951, contain the following report of a discussion of agents' commissions (also quoted on p. 90):

"Commissions - A short discussion took place in regard to the commission question. The meeting was polled by a show of hands to see how many were in favour of adopting a standard commission rate but as unanimity could not be secured, no further action was taken."

(Minutes of meeting of B.C. Conference, October 11, 1951)

Another reference to agents' commissions in British Columbia is found in the Minutes of a meeting of the Eastern Conference on December 4, 1951, as follows:

"Mr. Wittick opened a general discussion on commissions. . . Some of the various views and comments made were as follows: that in B.C. Commissions were adjusted to $2\frac{1}{2}\%$ above the schedule paid by the C.U.A. companies. . ."

(Minutes of meeting of Eastern Conference, December 4, 1951)

A report of a Sub-Committee appointed by the Automobile Executive Committee of the B.C.U.A. to consider the rating of taxis states:

"Considerable discussion took place over the present market conditions for taxi business and it appeared that very few Member companies were writing this business. The Non-tariff competition, such as it was, too it was felt would be modified considerably in 1952 since these companies had agreed to follow a set differential of not more than $2\frac{1}{2}\%$ Commission on automobile business in excess of that paid by Board Companies, which would mean $9\frac{1}{2}\%$ on Taxis."

(Meeting of Sub-Committee of the
Automobile Executive Committee
of the B.C.U.A., November 6,
1951)

CHAPTER VI

COMPARISON OF THE LEVELS OF PREMIUM RATES OF BOARD AND CONFERENCE COMPANIES

The Director's Statement contains a factual comparison of the levels of premium rates of Board and Conference organizations in those territories in which both groups operate. In addition, the Statement also contains an analysis of the rates of Conference companies which were not the same as the recommended rates. The comparisons are based on a 1953 Ford Mainline Fordor Sedan with the following insurance coverages: Public Liability = \$5,000-\$10,000; Property Damage = \$1,000; Collision = \$100 deductible; Fire and Theft. It was found that there were no substantial differences between the various classes of insured as defined in the rate manuals of the Board organizations and in the rate manuals of the Conference companies whose rates were used for purpose of the comparisons.

1. Quebec

In the Province of Quebec, the rating territories of the Conference and Board members are practically identical. There are three of them, entitled Territories A, B and C in the C.U.A.'s classification, to which correspond Territories 1, 3 and 2 respectively in the Conference classification.

The following table, found on page 245 of the Director's Statement, sets out a comparison of the 1953 C.U.A. rates and 1953 rates followed by the majority of Conference members for a 1953 Ford "Mainline Fordor" in the Province of Quebec for the insurance coverage described above. The rates for corresponding territories of Board and Conference members are set out opposite each other.

CONFERENCE

C. U. A.

Quebec

	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>	<u>Territory 1</u>	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>
<u>Territory A</u>											
P.L. & P.D.	\$ 45.00	\$ 58.00	\$ 90.00	\$104.00	\$104.00	P.L. & P.D.	\$ 45.00	\$ 56.00	\$ 87.00	\$100.00	\$104.00
Collision	49.00	61.00	95.00	110.00	110.00	Collision	48.00	59.00	93.00	107.00	110.00
Fire & Theft	12.30	12.30	12.30	12.30	12.30	Fire & Theft	11.75	11.75	11.75	11.75	11.75
Total	\$107.30	\$131.30	\$197.30	\$226.30	\$226.30	Total	\$104.75	\$126.75	\$191.75	\$218.75	\$225.75
<u>Territory B</u>						<u>Territory 3</u>					
P.L. & P.D.	43.00	54.00	84.00	97.00	97.00	P.L. & P.D.	42.00	52.00	81.00	93.00	97.00
Collision	69.00	86.00	133.00	155.00	155.00	Collision	67.00	84.00	130.00	151.00	155.00
Fire & Theft	9.90	9.90	9.90	9.90	9.90	Fire & Theft	9.50	9.50	9.50	9.50	9.50
Total	\$121.90	\$149.90	\$226.90	\$261.90	\$261.90	Total	\$118.50	\$145.50	\$220.50	\$253.50	\$261.50
<u>Territory C</u>						<u>Territory 2</u>					
P.L. & P.D.	50.00	62.00	96.00	112.00	112.00	P.L. & P.D.	49.00	61.00	93.00	108.00	112.00
Collision	70.00	88.00	136.00	158.00	158.00	Collision	68.00	86.00	133.00	154.00	158.00
Fire & Theft	9.90	9.90	9.90	9.90	9.90	Fire & Theft	9.50	9.50	9.50	9.50	9.50
Total	\$129.90	\$159.90	\$241.90	\$279.90	\$279.90	Total	\$126.50	\$156.50	\$235.50	\$271.50	\$279.50

There are 45 separate rates included in the tabulation of C.U.A. and Conference rates made by the Director. Of the total of 45 Conference rates:

10	are	40	cents	lower
5	"	55	"	"
5	"	\$1	lower	
7	"	\$2	"	
7	"	\$3	"	
5	"	\$4	"	

than the corresponding C.U.A. rates, while 6 are the same as C.U.A. rates.

The following analysis of the information with respect to premium rates of Conference companies is given in the Director's Statement:

"Of the 25 Conference members writing automobile insurance in the Province of Quebec, 20 charged the Conference rates shown in the above Table for Public Liability and Property Damage coverage, 1 charged Board rates, while 4 charged rates ranging approximately \$6.00 lower than the Conference rates shown in the above Table, the rates of these four companies being identical; for the Collision coverage 12 charged the rates shown in the above Table, 1 charged Board rates, 4 charged higher rates for 'Class 1' in each territory and Conference rates for the remaining classes, 7 charged lower rates for 'Class 1' in two territories and Conference rates otherwise, while 1 charged substantially lower rates, particularly for 'Classes 2, 3, 4 and 5'; for Fire and Theft coverage 23 companies charged the Conference rates shown in the above Table, some also including miscellaneous coverage at this rate, 1 charged Board rates while 1 charges rates \$2.00 to \$2.25 lower than Conference rates. Some nine members had special rates for farmers in the various types of coverage.

A comparison of the rates in the above Table shows that for Third Party liability coverage there is a consistency between Board and Conference rates; that is, for 'Class 1', the differential is \$1.00 for 'Class 2' - \$2.00 and so on, the rates for 'Class 5' being the same. The only exception to this is for 'Class 2' - in Territory 2 where the differential is \$1.00. For Collision coverage, the differential between the two ranges between \$1.00 and \$4.00, except for 'Class 5' where the rates are the same. For Fire and Theft coverage the differential is very minor, being 55 cents in Territory 1

and 40 cents in Territories 2 and 3."

(Statement, p. 246)

2. Ontario

In Ontario the rating territories of the Board and Conference members are substantially similar, but in this province there are six territories. In the C.U.A.'s classification they are entitled Territories A, AA, B, C, D, and E, to which correspond Territories 1, 1A, 2, 5, 3, and 4 respectively in the Conference classification. The C.U.A. rates and the rates charged by a large majority of the Conference members are given in a table on pp. 250-51 of the Director's Statement.

CONFERENCE

C. U. A.

ONTARIO

	Class 1	Class 2	Class 3	Class 4	Class 5		Class 1	Class 2	Class 3	Class 4	Class 5
<u>Territory A</u>						<u>Territory 1</u>					
P.L. & P.D.	\$ 24.00	\$ 29.00	\$ 46.00	\$ 53.00	\$ 53.00	P.L. & P.D.	\$ 23.00	\$ 28.00	\$ 45.00	\$ 51.00	\$ 53.00
Collision	27.00	34.00	52.00	60.00	60.00	Collision	27.00	34.00	52.00	60.00	60.00
Fire & Theft	7.00	7.00	7.00	7.00	7.00	Fire & Theft	7.00	7.00	7.00	7.00	7.00
Total	\$ 58.00	\$ 70.00	\$105.00	\$120.00	\$120.00	Total	\$ 57.00	\$ 69.00	\$104.00	\$118.00	\$120.00
<u>Territory AA</u>						<u>Territory 1A</u>					
P.L. & P.D.	27.00	34.00	52.00	60.00	60.00	P.L. & P.D.	26.00	33.00	51.00	59.00	60.00
Collision	38.00	48.00	74.00	86.00	86.00	Collision	38.00	48.00	74.00	86.00	86.00
Fire & Theft	8.00	8.00	8.00	8.00	8.00	Fire & Theft	8.00	8.00	8.00	8.00	8.00
Total	\$ 73.00	\$ 90.00	\$134.00	\$154.00	\$154.00	Total	\$ 72.00	\$ 89.00	\$133.00	\$153.00	\$154.00
<u>Territory B</u>						<u>Territory 2</u>					
P.L. & P.D.	22.00	28.00	44.00	51.00	51.00	P.L. & P.D.	21.00	27.00	43.00	49.00	51.00
Collision	31.00	39.00	60.00	70.00	70.00	Collision	31.00	39.00	60.00	70.00	70.00
Fire & Theft	4.00	4.00	4.00	4.00	4.00	Fire & Theft	4.00	4.00	4.00	4.00	4.00
Total	\$ 57.00	\$ 71.00	\$108.00	\$125.00	\$125.00	Total	\$ 56.00	\$ 70.00	\$107.00	\$123.00	\$125.00

CONFERENCE

C. U. A.

ONTARIO (Cont'd.)

	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>		<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>
<u>Territory C</u>						<u>Territory 5</u>					
P.L. & P.D.	\$ 15.00	\$ 19.00	\$ 29.00	\$ 34.00	\$ 34.00	P.L. & P.D.	\$ 14.00	\$ 18.00	\$ 28.00	\$ 33.00	\$ 34.00
Collision	60.00	75.00	116.00	135.00	135.00	Collision	60.00	75.00	116.00	135.00	135.00
Fire & Theft	6.50	6.50	6.50	6.50	6.50	Fire & Theft	6.50	6.50	6.50	6.50	6.50
Total	\$ 81.50	\$100.50	\$151.50	\$175.50	\$175.50	Total	\$ 80.50	\$ 99.50	\$150.50	\$174.50	\$175.50
<u>Territory D</u>						<u>Territory 3</u>					
P.L. & P.D.	18.00	22.00	34.00	40.00	40.00	P.L. & P.D.	17.00	21.00	33.00	39.00	40.00
Collision	29.00	36.00	56.00	65.00	65.00	Collision	29.00	36.00	56.00	65.00	65.00
Fire & Theft	3.50	3.50	3.50	3.50	3.50	Fire & Theft	3.50	3.50	3.50	3.50	3.50
Total	\$ 50.50	\$ 61.50	\$ 93.50	\$108.50	\$108.50	Total	\$ 49.50	\$ 60.50	\$ 92.50	\$107.50	\$108.50
<u>Territory E</u>						<u>Territory 4</u>					
P.L. & P.D.	17.00	21.00	33.00	38.00	38.00	P.L. & P.D.	16.00	20.00	32.00	37.00	38.00
Collision	28.00	36.00	55.00	64.00	64.00	Collision	28.00	36.00	55.00	64.00	64.00
Fire & Theft	3.50	3.50	3.50	3.50	3.50	Fire & Theft	3.50	3.50	3.50	3.50	3.50
Total	\$ 48.50	\$ 60.50	\$ 91.50	\$105.50	\$105.50	Total	\$ 47.50	\$ 59.50	\$ 90.50	\$104.50	\$105.50

There are 90 separate rates included in this tabulation of C.U.A. and Conference rates. Of the total of 90 Conference rates 66 are identical with corresponding C.U.A. rates, 22 are \$1 lower, and 2 are \$2 lower.

Of the 33 Conference members writing automobile insurance in Ontario, 27 used the Conference rates shown in the above table for third party liability, but with the following exceptions: 12 of these used Board rates in one or more territories; one member used rates higher than Conference rates in one territory; another member had rates lower than Conference rates on two classes in one territory. Six members used Board rates in each of the territories. Not all members wrote automobile insurance in every territory, some writing in only five of the six. Furthermore, one member had one additional territory, the rates being identical to Board rates for the Board territory which included this additional territory.

For the Collision coverage 16 of the members used Conference rates (which are the same as Board rates). Ten members, generally speaking, followed these rates but in some territories and for some classes used higher rates. One company used higher rates throughout the various territories. Six companies used lower rates throughout the various territories, the rates of these companies being identical in the majority of the territories. For Fire and Theft coverage 22 of the member companies used Conference rates (which are the same as Board rates), in each of the territories. Five companies used higher rates but their rates as quoted included miscellaneous coverages as well as Fire and Theft. Five companies used rates lower than the Board or Conference rates, but their rates were all identical. One company used the Conference rate in two territories, a higher rate in three territories, and a lower rate in one territory.

In addition to the rates referred to above, the majority of the companies had special rates for farmers in one or more territories, these rates generally having been lower than the above rates for one or more types of coverage.

3. The Prairie Provinces

The Director's Statement (pp. 260-61) presents tables comparing the 1953 rates of the W.C.I.U.A. and the Western Conference basic rates throughout the Provinces of Manitoba, Saskatchewan and Alberta for all classes of insureds and for all constituent territories of the provinces.

The Western Conference does not issue a rate manual in its own name but the basic rates finally decided upon by the majority of the members are forwarded to one printer to keep the costs in line.

The definitions of the various classes of insureds given in the Statement are taken from the rate manual of one of the member companies which followed Conference rates throughout the Prairie Provinces. These definitions were substantially the same as those used by the C.U.A. and W.C.I.U.A., although there were small differences of wording here and there. For instance, in the Conference member's Class 1 - Claim-free Select, one of the necessary requirements was:

"(b) There is no operator of the automobile under 25 years of age or any operator with less than 12 months driving experience in North America."

The corresponding section of the requirements for Class 1 in the C.U.A.'s definition does not include this requirement. Similarly, the Conference member's definition of Class 1 includes the further requirement that:

"(d) Neither the applicant, spouse, or any customary operator of the vehicle has, within the past three years, been involved in an accident as defined in paragraph (c) while operating any other private passenger automobile or motor cycle."

The corresponding section of the C.U.A. definition makes no mention of "spouse or any customary operator of the vehicle", nor does it refer to the operation of a motor cycle.

Again, the Conference member's Class 4 included all private passenger automobiles owned by limited companies, corporations, co-partnerships or unincorporated associations. The corresponding C.U.A. definition does not make any mention of unincorporated associations.

These differences of definition, however, are not of a substantial nature.

As in the case of Quebec and Ontario the rates shown in the Statement for the Prairie Provinces are for a 1953 Ford Mainline Fordor Sedan.

The rating territories used by each of these organizations were substantially identical.

The tables in the Director's Statement are as follows:

MANITOBA

W.C.I.U.A.

WESTERN CANADA CONFERENCE

	<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>		<u>Class 1</u>	<u>Class 2</u>	<u>Class 3</u>	<u>Class 4</u>	<u>Class 5</u>
<u>Territory A</u>						<u>Territory 1</u>					
P.L. & P.D.	\$ 22.00	\$ 28.00	\$ 43.00	\$ 50.00	\$ 50.00	P.L. & P.D.	\$ 21.00	\$ 27.00	\$ 42.00	\$ 49.00	\$ 50.00
Collision	25.00	31.00	48.00	56.00	56.00	Collision	24.00	30.00	46.00	54.00	54.00
Fire & Theft	6.00	6.00	6.00	6.00	6.00	Fire & Theft	5.75	5.75	5.75	5.75	5.75
Total	\$ 53.00	\$ 65.00	\$ 97.00	\$112.00	\$112.00	Total	\$ 50.75	\$ 62.75	\$ 93.75	\$108.75	\$109.75
<u>Territory B</u>						<u>Territory 2</u>					
P.L. & P.D.	17.00	21.00	33.00	39.00	39.00	P.L. & P.D.	15.00	19.00	30.00	35.00	39.00
Collision	28.00	35.00	54.00	63.00	63.00	Collision	27.00	34.00	53.00	61.00	61.00
Fire & Theft	4.50	4.50	4.50	4.50	4.50	Fire & Theft	4.75	4.75	4.75	4.75	4.75
Total	\$ 49.50	\$ 60.50	\$ 91.50	\$106.50	\$106.50	Total	\$ 46.75	\$ 57.75	\$ 87.75	\$100.75	\$104.75
<u>Territory C</u>						<u>Territory 3</u>					
P.L. & P.D.	10.00	13.00	20.00	23.00	23.00	P.L. & P.D.	10.00	13.00	20.00	23.00	23.00
Collision	21.00	26.00	41.00	48.00	48.00	Collision	20.00	25.00	39.00	45.00	45.00
Fire & Theft	5.00	5.00	5.00	5.00	5.00	Fire & Theft	4.75	4.75	4.75	4.75	4.75
Total	\$ 36.00	\$ 44.00	\$ 66.00	\$ 76.00	\$ 76.00	Total	\$ 34.75	\$ 42.75	\$ 63.75	\$ 72.75	\$ 72.75

SASKATCHEWAN

<u>Territory A</u>						<u>Territory 4</u>					
P.L. & P.D.	12.00	15.00	23.00	27.00	27.00	P.L. & P.D.	12.00	15.00	23.00	27.00	27.00
Collision	27.00	33.00	52.00	60.00	60.00	Collision	27.00	33.00	52.00	60.00	60.00
Fire & Theft	5.75	5.75	5.75	5.75	5.75	Fire & Theft	5.75	5.75	5.75	5.75	5.75
Total	\$ 44.75	\$ 53.75	\$ 80.75	\$ 92.75	\$ 92.75	Total	\$ 44.75	\$ 53.75	\$ 80.75	\$ 92.75	\$ 92.75
<u>Territory B</u>						<u>Territory 5</u>					
P.L. & P.D.	10.00	12.00	19.00	22.00	22.00	P.L. & P.D.	10.00	12.00	19.00	22.00	22.00
Collision	24.00	30.00	47.00	55.00	55.00	Collision	24.00	30.00	47.00	55.00	55.00
Fire & Theft	5.00	5.00	5.00	5.00	5.00	Fire & Theft	5.00	5.00	5.00	5.00	5.00
Total	\$ 39.00	\$ 47.00	\$ 71.00	\$ 82.00	\$ 82.00	Total	\$ 39.00	\$ 47.00	\$ 71.00	\$ 82.00	\$ 82.00

ALBERTA

<u>Territory A</u>						<u>Territory 6</u>					
P.L. & P.D.	16.00	20.00	31.00	36.00	36.00	P.L. & P.D.	15.00	19.00	30.00	34.00	36.00
Collision	33.00	41.00	64.00	75.00	75.00	Collision	31.00	39.00	60.00	70.00	70.00
Fire & Theft	6.75	6.75	6.75	6.75	6.75	Fire & Theft	6.00	6.00	6.00	6.00	6.00
Total	\$ 55.75	\$ 67.75	\$101.75	\$117.75	\$117.75	Total	\$ 52.00	\$ 64.00	\$ 96.00	\$110.00	\$112.00
<u>Territory B</u>						<u>Territory 7</u>					
P.L. & P.D.	21.00	26.00	41.00	47.00	47.00	P.L. & P.D.	20.00	25.00	39.00	45.00	47.00
Collision	43.00	54.00	84.00	97.00	97.00	Collision	42.00	52.00	81.00	94.00	94.00
Fire & Theft	10.25	10.25	10.25	10.25	10.25	Fire & Theft	9.75	9.75	9.75	9.75	9.75
Total	\$ 74.25	\$ 90.25	\$135.25	\$154.25	\$154.25	Total	\$ 71.75	\$ 86.75	\$129.75	\$148.75	\$150.75
<u>Territory C</u>						<u>Territory 8</u>					
P.L. & P.D.	11.00	14.00	22.00	26.00	26.00	P.L. & P.D.	11.00	14.00	22.00	26.00	26.00
Collision	33.00	42.00	64.00	75.00	75.00	Collision	30.00	38.00	59.00	68.00	68.00
Fire & Theft	5.75	5.75	5.75	5.75	5.75	Fire & Theft	5.75	5.75	5.75	5.75	5.75
Total	\$ 49.75	\$ 61.75	\$ 91.75	\$106.75	\$106.75	Total	\$ 46.75	\$ 57.75	\$ 86.75	\$ 99.75	\$ 99.75
<u>Territory D</u>						<u>Territory 9</u>					
P.L. & P.D.	10.00	12.00	19.00	22.00	22.00	P.L. & P.D.	10.00	12.00	19.00	22.00	22.00
Collision	28.00	35.00	55.00	63.00	63.00	Collision	26.00	32.00	50.00	58.00	58.00
Fire & Theft	5.75	5.75	5.75	5.75	5.75	Fire & Theft	5.75	5.75	5.75	5.75	5.75
Total	\$ 43.75	\$ 52.75	\$ 79.75	\$ 90.75	\$ 90.75	Total	\$ 41.75	\$ 49.75	\$ 74.75	\$ 85.75	\$ 85.75

(a) Manitoba

The Province of Manitoba is divided by both organizations into three territories labelled respectively Territories A, B and C in the W.C.I.U.A. classification and Territories 1, 2 and 3 in the Western Conference members' classification.

The table of Conference rates for Manitoba is composed of 45 separate rates, to each of which corresponds one of 45 W.C.I.U.A. rates. Of these Conference rates:

10	are	25	cents	lower
11	"	\$1	lower	
8	"	\$2	"	
3	"	\$3	"	
1	is	\$4	"	
5	are	25	cents	higher

while 7 are the same as the W.C.I.U.A. rates.

(b) Saskatchewan

In the Province of Saskatchewan both organizations use two territories, labelled Territories A and B in the W.C.I.U.A. classification and Territories 4 and 5 in that of the Conference.

(c) Alberta

In the Province of Alberta the W.C.I.U.A. uses four territories, labelled respectively Territories A, B, C and D, while the Western Conference, which treats the Prairie Provinces as a whole, has corresponding territories labelled Territories 6, 7, 8 and 9 respectively.

The table of Conference rates is composed of 60 separate rates (excluding totals) to each of which corresponds one of 60 W.C.I.U.A. rates. Of these Conference rates:

5	are	50	cents	lower
5	"	75	"	"
6	"	\$1	lower	
7	"	\$2	"	
5	"	\$3	"	
2	"	\$4	"	
6	"	\$5	"	
2	"	\$7	"	

than the corresponding W.C.I.U.A. rates, while 22 were the same.

The Director's Statement contains the following analysis of the relationship of Board and Conference premium rates in these three provinces:

"From the above it will be noted that in Manitoba the rates for public liability and property damage were the same in one territory, generally the Conference rates were \$1 lower in another territory and \$2 to \$4 lower in the remaining territory; for collision coverage the Conference rates generally were \$1 or \$2 lower, being \$3 lower in classes 4 and 5 of territory 3; for fire and theft coverage, Conference rates were 25 cents lower in two territories and 25 cents higher in the remaining territory. In Saskatchewan the rates of both organizations for these various coverages were identical. In Alberta the rates for public liability and property damage coverage were the same in two territories, and Conference rates were generally \$1 to \$2 lower in the remaining two territories; for collision coverage Conference rates were from \$1 to \$7 lower than Board rates; and for fire and theft coverage, Board and Conference rates were the same in two territories, Conference rates being 50 cents lower in one territory and 75 cents lower in the remaining territory."

(Statement, p. 262)

4. British Columbia

The Director's Statement (p. 269) contains a table which, as in the case of the other provinces already referred to, provides a comparison of the 1953 premium rates charged by the B.C.U.A. and the B.C. Conference for all classes of insured and for all the territories of the Province of British Columbia. As before, the rates are for a 1953 Ford Mainline Fordor Sedan, the information being drawn from the returns of information submitted by the Manager of the B.C.U.A. and the Vice-Chairman of the B.C. Conference respectively. The table follows:

		B.C.U.A.					B.C. CONFERENCE				
		Class 1	Class 2	Class 3	Class 4	Class 5	Class 1	Class 2	Class 3	Class 4	Class 5
<u>Territory A</u>							<u>Territory 7</u>				
P.L. & P.D.											
Collision		\$ 28.00	\$ 35.00	\$ 54.00	\$ 63.00	\$ 63.00	\$ 28.00	\$ 34.00	\$ 54.00	\$ 61.00	\$ 63.00
Fire & Theft		32.00	40.00	61.00	71.00	71.00	32.00	40.00	61.00	70.00	72.00
		10.80	10.80	10.80	10.80	10.80	10.80	10.80	10.80	10.80	10.80
Total		\$ 70.80	\$ 85.80	\$ 125.80	\$ 144.80	\$ 144.80	\$ 70.80	\$ 84.80	\$ 125.80	\$ 141.80	\$ 145.80
<u>Territory B</u>							<u>Territory 8</u>				
P.L. & P.D.											
Collision		19.00	24.00	37.00	43.00	43.00	19.00	23.00	37.00	41.00	43.00
Fire & Theft		33.00	41.00	63.00	74.00	74.00	33.00	41.00	63.00	72.00	74.00
		4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30	4.30
Total		\$ 56.30	\$ 69.30	\$ 104.30	\$ 121.30	\$ 121.30	\$ 56.30	\$ 68.30	\$ 104.30	\$ 117.30	\$ 121.30
<u>Territory C</u>							<u>Territory 9</u>				
P.L. & P.D.											
Collision		19.00	24.00	38.00	44.00	44.00	19.00	23.00	38.00	42.00	44.00
Fire & Theft		30.00	38.00	58.00	68.00	68.00	30.00	38.00	58.00	66.00	68.00
		7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Total		\$ 56.00	\$ 69.00	\$ 103.00	\$ 119.00	\$ 119.00	\$ 56.00	\$ 68.00	\$ 103.00	\$ 115.00	\$ 119.00
<u>Territory D</u>							<u>Territory 10</u>				
P.L. & P.D.											
Collision		20.00	24.00	38.00	44.00	44.00	20.00	23.00	38.00	42.00	44.00
Fire & Theft		55.00	69.00	106.00	123.00	123.00	55.00	69.00	106.00	122.00	124.00
		7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80	7.80
Total		\$ 82.80	\$ 100.80	\$ 151.80	\$ 174.80	\$ 174.80	\$ 82.80	\$ 99.80	\$ 151.80	\$ 171.80	\$ 175.80

Both organizations divided British Columbia into four territories, known in the B.C.U.A. classification as Territories A to D inclusive, and in the B.C. Conference classification as Territories 7 to 10 inclusive. With the exception of possible small variations, the territories used by the two organizations were identical, Territories A to D (B.C.U.A.) corresponding to Territories 7 to 10 (B.C. Conference).

The rates shown are for five classes of insured, the definition of these classes in the B.C.U.A. automobile rate manual being the same as those in the C.U.A. manual. The B.C. Conference definitions have some minor variations, but are substantially similar to those of the B.C.U.A. Classes 1, 2 and 3 as defined by the Conference definitions are exactly the same as the definitions used by the Western Conference for these classes, having therefore the differences from the C.U.A. definitions noted in the section of this chapter dealing with collaboration in the Prairie Provinces. While the B.C. Conference's definitions for Classes 4 and 5 differ in wording from those of the C.U.A. for these classes, it does not appear that there is any substantial difference between the classes of insured covered by the two sets of definitions.

The table of premium rates shows a most remarkable degree of similarity between the rates charged by the B.C.U.A. and by the B.C. Conference. The table of Conference rates consists of 60 separate rates, each of which corresponds to one of 60 rates charged by the B.C.U.A. Of the 60 Conference rates, 46 were identical with the corresponding B.C.U.A. rates, 8 were \$1 lower, and 6 were \$2 lower.

The Director's Statement contains some further analysis of the relationship between Board and Conference premium rates as follows:

"A comparison of the above rates shows that for public liability and property damage the rates of both organizations were identical for 'Classes 1, 3 and 5', while Conference rates were \$1 lower for 'Class 2' and \$2 lower for 'Class 4'; for collision coverage the rates of both were identical for 'Classes 1, 2 and 3', while Conference rates in the two territories were \$1 lower for 'Class 4' and \$1 higher for 'Class 5' and in the remaining two territories were \$2 lower for 'Class 4' and the rates of both were identical for 'Class 5'; for fire and theft coverage the rates of both were identical in each territory."

(Statement, p. 270)

CHAPTER VII

PREMIUM LEVELS OF INDEPENDENT COMPANIES

A matter of considerable interest in this inquiry is the extent to which the premium rates charged by Board companies influenced the rates charged by the Conference companies and the extent to which, in turn, the rates charged by either of these two organizations may have influenced the premium rates charged by the independent companies, that is, by companies which were either completely independent of both of the aforementioned organizations, or had only partial membership in either or both of them.

The two preceding chapters dealt with the collaboration between the Board organizations and the Conference organizations and with the resemblance between the Board and Conference rates for three coverages for a 1953 Ford Mainline Fordor Sedan in the year 1953 in all provinces from Quebec to British Columbia inclusive. The resemblance in respect of the rates applicable to this particular car may be taken, in the absence of any evidence or argument to the contrary, to be representative of the general relationship between all rates charged in these provinces by the two sets of organizations. The present chapter will deal with the extent of the influence of the Board and Conference organizations and their rates on the premium rates charged by independent and partially independent companies.

In the period 1950-52 there were some 34 companies having no connection with any of the Board associations or Conferences. In addition, there were 20 companies which were members of a Board or Conference organization in one or more territories and had no connection with any of such organizations in other territories. However, some of these were either Board or Conference members in most territories. Companies which belonged to Conference organizations in one or more other territories are considered to be independent companies in so far as the Maritime Provinces and Newfoundland are concerned, because there was no Conference organization in the Atlantic Provinces.

Of the 54 independent or partially independent companies referred to above, many were comparatively small so far as net automobile premium income was concerned, and, even among what may be described as the large companies, some wrote only in one or two provinces. In the period 1950-52, 8 companies wrote approximately 65 per cent of the business written by wholly independent companies in Canada. Of the partially independent companies, 7 which wrote auto-

mobile insurance in most parts of Canada belonged to only one Board rating association or Conference organization, but of these companies one had a relatively small net premium income compared to the remaining six. The above-mentioned 14 independent and partially independent companies accounted for approximately 21, 22, 24, 27 and 29 per cent respectively of the total net automobile insurance premium income in Canada in the years 1950-54 respectively.

The following table, compiled from details given in the Director's Statement (pp. 174-190), sets out the premium policies, first of the 8 independent, and then of the 6 partially independent companies:

A. Completely Independent Companies

Other Remarks

Level of Premium Rates

Provinces in which Insurance Sold

Coverages Restricted to

Company

Allstate Insurance Company

Throughout Canada

Rates generally substantially below those of industry generally. Has its own rates and rating system.

Baloise Fire Insurance Company Limited

Fire, Theft and Collision only. Confined to finance business.

1950-51 - All provinces except Newfoundland, P.E.I., N.B.
1952 - Discontinued in Prairies and N.S.

Charges "prevailing" rates, such "as might be charged by any organization or conference."

Federal Insurance Company

All provinces except P.E.I. and Newfoundland. Over 90% in Ontario and Quebec.

Rates were influenced by:
In Prairies - Board rates,
In B.C. - Board and Conference rates to April 1, 1953,
Board rates thereafter.
In Ont. & Que. - Conference rates. In N.S. & N.B. - Board rates.

Federated Mutual Implement and Hardware Insurance Company

All provinces except Newfoundland and P.E.I.

Board rates

<u>Company</u>	<u>Coverages Restricted to</u>	<u>Provinces in which Insurance Sold</u>	<u>Level of Premium Rates</u>	<u>Other Remarks</u>
General Exchange Insurance Corporation	Fire, Theft, Collision, comprehensive, and additional physical damage coverages on financed automobiles.	All provinces, Yukon and N.W.T.	Uses its own rate manuals. Rates materially lower than Board and Conference rates in Ont., Que., and parts of B.C., but in all other areas (except Saskatchewan) are substantially the same.	
Non-Marine Underwriters, Member of Lloyds, London, England		Throughout Canada. In 1950-52 over 80% in Ont. and Que.	Generally lower than those of Board companies, but not substantially so. In some cases the same or slightly higher.	
Saskatchewan Government Insurance Office		Saskatchewan, some other provinces of Canada and some states of U.S.A.	Difficult to compare.	
State Farm Mutual Automobile Insurance Company		Ontario only.	Develops its own rates which are generally lower than either Board or Conference company rates.	
B. Partially Independent Companies				Member of W.C.I.U.A. and Board Associations in N.S., P.E.I. and Newfoundland.
Canadian Fire Insurance Co.		All provinces except N.B.	Board rates with minor exceptions.	

<u>Company</u>	<u>Coverages Restricted to</u>	<u>Provinces in which Insurance Sold</u>	<u>Level of Premium Rates</u>	<u>Other Remarks</u>
Canadian Indemnity Co.		All provinces except P.E.I. and Newfoundland.	Board rates.	Member of W.C.I.U.A.
London & Edinburgh Insurance Co. Ltd.		Prior to 1953, most provinces; after 1953, Ont. and Que. only.	In Ontario, Lloyds' rates. In Que., C.U.A. rates less a discount which is flexible but not over 10%.	Member of C.U.A. Also of B.C.U.A. (until 1952) and of W.C.I.U.A. (until 1953).
Lumbermen's Mutual Casualty Company.		All provinces except P.E.I. & Newfoundland. In 1950-52, about 90% of business in Ont. and Quebec.	These are set in Ont. & Que. after consideration of I.A.C.I.C. rates and all current competitive factors. Elsewhere by the same factors except I.A.C.I.C. rates.	

<u>Company</u>	<u>Coverages Restricted to</u>	<u>Provinces in which Insurance Sold</u>	<u>Level of Premium Rates</u>	<u>Other Remarks</u>
Traders General Insurance Company	On vehicles financed by Traders' Finance Corp. Ltd. and Trans-Canada Credit Corporation.		Board rates.	Affiliates are members of a Conference organization in one territory and are Board members in all but one or two other areas where they sell auto insurance. Company itself does not belong to any Board or Conference organizations.
The Wawanesa Mutual Insurance Co.			N.B. & N.S. - Board rates with minor deviations. Que. - Prior to 1952 - at own rates on taxicabs and U-drives. Private passenger cars at Conference rates. After 1952 - private passenger cars at its own rates. Ont. - Conference rates. Prairies & B.C. - Independent rates.	Member of I.A.C.I.C. for Ontario. Attends meetings of and contributes to I.A.I.C. B.C. although not a member of it.

Examination of the foregoing table makes it clear that the partially independent companies, as might have been expected, were strongly influenced by Board and Conference rates, particularly by the former. Of these six companies, two (Traders General Insurance Co. and the Canadian Indemnity Co.) charged Board rates and a third (Canadian Fire Insurance Co.) charged Board rates with minor exceptions. The rates of Wawanesa Mutual were Board rates in New Brunswick and Nova Scotia. The London & Edinburgh rates in Quebec were set at flexible discounts not exceeding 10 per cent below Board levels. Conference rates were charged by Wawanesa Mutual in Ontario, and in Quebec on private passenger automobiles prior to 1952. Lumbermen's Casualty's rates, it is clear, were influenced by both Board and Conference rates in Ontario and Quebec, and elsewhere by Board rates, although other factors may have had a bearing.

Of the completely independent companies, it appears that only two, Allstate and State Farm Mutual, were completely independent in their rating systems and charged rates appreciably lower than Board or Conference rates. General Exchange Insurance used its own rating manuals and charged rates substantially below Board and Conference rates in Ontario, Quebec and parts of British Columbia; but in other areas, with the exception of Saskatchewan, the company set its own rates at Board and Conference levels. Nothing conclusive may be said about the rates charged by the Saskatchewan Government Insurance Office. Although the Director's Statement says at p. 181 that:

"The Saskatchewan Government Insurance Office does not belong to any Board or Conference organization and states that the rates which it charges are based entirely on the experience in Saskatchewan developed by itself."

we have no further guide as to the level of rates charged in relation to those of the Board and Conference organizations, it being stated at p. 182 that:

" . . . a realistic comparison of its rates with those of private companies is difficult . . . "

Lloyds' rates would appear to have varied around the levels set by the Board rates. The remaining companies' rates were either Board rates or were strongly influenced by Board and Conference rates.

CHAPTER VIII

RATING BUREAUS AND THE STATISTICAL EXHIBIT

1. The Statistical Exhibit

The business of automobile insurance, in common with other classes of insurance, differs from the sale of merchandise in that the costs which occur are not known until after the conclusion of the period for which the insurance has been provided. The basis for establishing insurance premiums lies in the application of the principle of statistical probability when dealing with large numbers in relation to past experience.

Conditions in the automobile field have been subject to such change that it has been considered desirable by insurers to have an annual review of the rating structure of automobile insurance. The rapid growth in the number of automobiles in use and the fluctuations in automobile insurance experience caused by, among other things, the increase in the number of accidents and the rising cost of automobiles and their repairs are some of the principal factors cited as necessitating frequent re-examination of the rate of automobile insurance premiums. That portion of the premium dollar which is made up of agents' commissions, company administrative expenses, premium taxes and licence fees can be calculated with some degree of accuracy in advance, but the cost of claims, litigation and other loss expense must be derived largely from past experience.

The Director's Statement contains the following summary of the setting of automobile insurance rates:

"Automobile insurance rates in Canada ordinarily are established once each year for the ensuing twelve months period. For Board companies the rates are established through the Dominion Board and the three rating Associations, C.U.A., W.C.I.U.A. and B.C.U.A.; for Conference companies recommended rates are established through meetings of the member companies in each of the three Conferences; while individual insurers which are not members of either Board Associations or Conferences normally establish their own rates independently, although in some cases Board or Conference rates are followed. Prior to 1953 these rates were promulgated effective on January 1 of each year, but in that year the effective date was changed to April 1, largely

due to the additional research necessary in establishing a preferred risk rating plan. Also, in 1954 some rating changes were made during the course of the year, but for 1955 and 1956 the rating programs ordinarily have been effective at the beginning of the year."

(Statement, pp. 144-45)

Following a recommendation of Mr. Justice Hodgins, who reported as a Royal Commissioner in an inquiry into automobile insurance premium rates in Ontario in 1930, an amendment was made to the Ontario Insurance Act requiring all insurers to file their experience on a uniform basis with an agency designated by the Ontario Superintendent of Insurance. Since 1931 the C.U.A. (formerly the Canadian Automobile Underwriters Association) has been the designated agency for Ontario and for other provinces in which similar legislation has been adopted.

The statistical department of the C.U.A. issues a publication called the Statistical Exhibit, commonly referred to as the "Green Book". It is prepared for all automobile insurers and is published annually, usually near the end of September.

Under the statutory requirements indicated above the Statistical Exhibit is prepared by the C.U.A. under the direction of the Superintendents of Insurance of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Prince Edward Island. Companies licensed to write automobile insurance in the Provinces of Quebec, Nova Scotia and Newfoundland, as well as the Yukon and Northwest Territories, have agreed voluntarily to file their experience with the Statistical Agency. The Director's Statement notes that statistical experience from Saskatchewan has not been included in the Statistical Exhibit since 1949 because of question as to the completeness of the returns, but statistical information is compiled for and made available to Board members.

The following description of the material contained in the Statistical Exhibit is given in the Director's Statement:

"The Exhibit as published sets out:

- (1) Private passenger automobile statistical classifications and contains countrywide private passenger experience and the experience for each province and each territory therein;
- (2) countrywide experience in respect of injuries to persons and damage to property for each private passenger

- statistical classification and the experience for each province and each territory therein;
- (3) passenger hazard experience on a countrywide basis and for each province;
 - (4) commercial automobile trade classifications and countrywide experience for each classification and for each province and each territory therein if more than one;
 - (5) countrywide experience in respect of injuries to persons and damage to property for the principal commercial trade classifications and the experience for each province and each territory therein, if more than one;
 - (6) experience for oil drilling, exploration and seismograph vehicles in the Province of Alberta and of logging trucks in the Province of British Columbia;
 - (7) countrywide experience for taxicabs, jitneys and liveries and the experience for each province and for each territory therein if more than one;
 - (8) countrywide experience of taxicabs, jitneys and liveries showing a comparison of passenger hazard losses for injuries to persons to total losses;
 - (9) countrywide experience for public buses (other than school, hotel, golf and country club) and the experience for each Province and each territory therein if more than one;
 - (10) countrywide experience of public buses by radius of operation and the experience for each province;
 - (11) countrywide experience for school, hotel, summer camp, resort, golf and country club buses and the experience for each province and for each territory therein if more than one;
 - (12) similar experience for funeral carriages and hearses and miscellaneous public automobiles;
 - (13) countrywide experience for garage keepers' legal liability policy and experience for each province;

- (14) similar experience for garages, automobile dealers and manufacturers policies and also experience relating to employers liability, to conversion, to single interest collision, fire and theft, to non-ownership contingent injuries to persons and damage to property; and
- (15) countrywide experience for drivers' policies covering combined injuries to persons and damage to property - excluding passenger hazard and the experience for each province."

(Statement, pp. 147-49)

2. Rating Bureaus in Canada

The statistics of insurance experience in Canada compiled by the Statistical Agency of the C.U.A. provide the statistical material for the determination of premium rates, but the rates themselves are established by rating bureaus or associations or by the individual insurance company when it sets its rates independently. The following description of the situation in Canada is taken from the Director's Statement:

"In the automobile insurance field in Canada there are three rating bureaus or associations maintained by Board companies; viz.: C.U.A. which establishes rates for its members effective in the Provinces of Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland; W.C.I.U.A. which establishes rates effective in the Provinces of Manitoba, Saskatchewan and Alberta and the Northwest Territories; and B.C.U.A. which establishes rates effective in the Province of British Columbia and the Yukon Territory . . . While each of above three rating territorial Associations has a considerable degree of local autonomy, there is an affiliation, formal or informal, among them and the other territorial Associations and the Dominion Board. The latter is what might be termed a parent organization and has a general power of supervision over these various Associations. For example, basic premium rates and formulae applicable throughout the country (except Newfoundland) are determined by a committee of the Dominion Board and C.U.A.; the annual meeting of this group is attended not only by representatives of C.U.A., W.C.I.U.A. and B.C.U.A. but also by representatives of the other territorial Associations (except Newfoundland) even though these latter

territorial Associations do not purport to exercise jurisdiction over automobile insurance; when the rates recommended by the committee have been approved by the Dominion Board they are then considered by the three rating territorial Associations and may be approved as they are or may be varied by each to meet local conditions. . .

A modified form of rating bureau is operated by each of the three Conference organizations which together exercise jurisdiction over the territory from and including the province of Quebec to the Pacific Coast. For the territory over which each of these organizations exercises jurisdiction, recommended premium rates are promulgated for the members; i.e., the rates so promulgated are not binding upon the members who are free to deviate from them, although from time to time there is a substantial measure of agreement. The Conferences do not purport to promulgate commission rates, although as illustrated in the preceding Chapter there has from time to time been agreement among the members as to the maximum rates to be paid. Each Conference organization is completely autonomous and there is no formal affiliation among them, although representatives of one or more of such organizations from time to time attend meetings of the other organizations."

(Statement, pp. 125-26)

3. Dominion Board and Board Rating Associations

When the Statistical Exhibit is issued by the Statistical Agency, usually toward the end of September each year, it is first considered by the Dominion Board-C.U.A. Automobile Rates and Rules Committee. Beginning in 1952, this function was assigned to a special committee whose responsibility was to consider the Statistical Exhibit and submit a recommended rating program, together with information respecting the effect of the program on the rate level in each rating territory to the Dominion Board-C.U.A. Committee. In preparation of its recommendations the special committee held meetings to consider submissions of members and the various territorial associations for changes in rating direction and methods of rating. The meeting of the Dominion Board-C.U.A. Committee to draw up recommendations for a draft rating program for the various territories was also attended by representatives from each of the territorial associations other than the N.B.I.U. The Committee made recommendations relating to such matters as enlargement or shrinking of existing statistical territories, formulae for determining rates for public liability or property damage or fire or theft coverages when written individually, tables of

rates for increased limits on public liability or property damage coverages, methods of fleet rating, classification of automobile models for rating purposes, and classification of various rating groups.

In so far as the rating program was concerned, the initial recommendation was generally a formula of relativity as between classes of insured and use for the particular class of vehicle. The procedure followed was first to determine the basic class of insured and use within which the majority of motor vehicles fell, and then to establish a formula, applicable to all territories, which would permit the calculation of rates for other classes of insured and use as percentages of the rate applicable to the basic group. This procedure was followed with respect to public liability and property damage, collision coverage, fire and theft coverage, and, later, to the comprehensive coverage. The whole procedure involved classifying private passenger cars and commercial vehicles into various rating groups for each territory. Commercial vehicles were classified into various rating groups based on the make, size, type, and year of the vehicle; or on the year of the vehicle, the list price of the chassis and cab, and the cost of the body.

Where a new coverage was introduced, such as the comprehensive coverage in 1952, a specific premium was recommended in the first instance for inclusion in the premium table.

There were other classifications, such as non-owned vehicles, public automobiles, and garage liability, and specific recommendations respecting rate changes for such classes were made at the same time as the general recommendations outlined above.

As the rating of fleets was based on a formula, recommendations might be made by the Committee in respect to changes in the formula.

The recommended rating program as finally drafted was then submitted to the Dominion Board Automobile Committee, which either adopted it as presented or adopted it with amendments, set the effective date when the rate changes were to come into effect, and instructed the Manager to advise the territorial associations accordingly. Also, though not necessarily invariably, the Dominion Board Automobile Committee directed that its Chairman notify the Superintendents of Insurance and other interests as to the program. The Dominion Board Automobile Committee then directed that arrangements be made with the Managers of the various territorial associations to circularize their members, asking them to refrain, until further notice, from issuing renewals for the period starting with the effective date for the rate changes. Provision was made also for the necessary arrangements to be made to announce the rate changes to the public.

Until 1952 rates and matters pertaining to rating for Newfoundland were dealt with by the Newfoundland Rates Committee of the C.U.A. When, however, substantial changes were made by the Dominion Board-C.U.A. Committee in the rating programs throughout Canada for the year 1953, the program was made applicable to the Province of Newfoundland.

That part of the rating program applicable to its territory was then considered by each of the three rating associations, i.e., the C.U.A., the W.C.I.U.A., and the B.C.U.A. As previously indicated, the draft program might be approved as recommended or varied for the particular territory.

(a) Rating Procedure of the C.U.A.

When the recommended rating program of the Dominion Board-C.U.A. Committee was referred to the Dominion Board Automobile Committee for its consideration and adoption, it apparently was considered at the same time by the C.U.A. Automobile Branch Executive Committee, the meetings of both committees being held on the same day or days and attended by the same persons. The rating program might be accepted by the C.U.A. Automobile Branch Executive Committee as submitted or might be amended. Although the Minutes and actions of the Automobile Branch Executive Committee were subsequently approved by the Branch Annual Meeting of the Council, in practice the actual completion of the rating program for the territory under the jurisdiction of the C.U.A. (excluding Newfoundland until 1953) appeared to rest with the Committee itself. When the rating program was adopted it was conveyed to the provincial Superintendents of Insurance for Ontario and Quebec and to members and their agents by way of amendments to the existing rate manual or by complete re-issue of the manual. The rating manual contained rates for each rating territory in each of Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. The manual contained sections setting out rates on various coverages for private passenger, commercial, non-owned and public automobiles and garage liability, and these rates were the minimum rates which might be charged by member companies writing automobile insurance in the above provinces. In some instances, where the risks were unique, or where small classes existed which did not lend themselves to broad general treatment, the manual contained a direction "Apply to Company".

(b) Rating Procedures of W.C.I.U.A. and B.C.U.A.

The same general procedure for the establishment of rates is followed by the W.C.I.U.A. and the B.C.U.A. and a representative

of each Association attends the meeting of the Dominion Board-C.U.A. Automobile Rates and Rules Committee when a draft rating program is developed. The rating manuals of the two Western Associations were substantially identical in form to the C.U.A.'s manual and both set out the minimum rates which members might charge to insureds for the coverages shown. The W.C.I.U.A.'s manual, however, in that section applicable to the Northwest Territories said "Apply to Company". In the case of both the B.C.U.A. and the W.C.I.U.A., the same rating matters appeared to be entirely within the jurisdiction of these bodies and the rating programs produced by the Dominion Board-C.U.A. Committee for their respective territories were purely recommendatory. However, it appeared that rating problems likely to affect other territorial associations were submitted to the Dominion Board-C.U.A. Committee for discussion and decision. In the case of the W.C.I.U.A., questions of reduced rates were also required to be referred first to the Dominion Board-C.U.A. Committee. In the case of the W.C.I.U.A., changes in classification and in methods of rating were also submitted to the Dominion Board-C.U.A. Committee for discussion and decision.

4. Rating Programs of the Conference Organizations

Each of the three Conferences is an autonomous organization, there being no central co-ordinating parent organization corresponding to the Dominion Board. Although there is some liaison among the three Conferences, each operates quite independently of the others with regard to the establishment of premium rates for automobile insurance.

The following report of co-operative activity is given in Minutes of the Annual Meeting of the I.A.C.I.C. in the section entitled "General Manager's Report for the Year Ending May 31st, 1958":

"CO-OPERATION WITH CONFERENCES IN OTHER TERRITORIES:

The Conference has tried to be helpful by providing rating and other information to the Western Canada Independent Automobile Insurance Conference, and the Independent Automobile Insurance Conference of British Columbia.

The Conference assisted members transacting business in the Maritime Provinces in the preparation of the 1958 Rating Programme, and in publishing information respecting the report of the Royal Commission in Nova Scotia on Automobile Insurance."

(Exhibit H-9)

(a) Rating Procedure of the Eastern Conference (I.A.C.I.C.)

The Eastern Conference's Rating Committee (later called the Research Committee) studied the figures in the Statistical Exhibit, and after consideration of the Exhibit and all current competitive factors, made its recommendations on rates to the membership as a whole at a meeting usually held in the latter part of the year. With regard to the adherence of the member companies to these recommended rates, the then President of the Eastern Conference stated in his return of information:

"Automobile insurance premium rates and agents' commissions to be charged or paid by member companies are not established or controlled by the Conference.

It may be stated, however that the Rating Committee each year presents to the Conference a rating programme for consideration and approval. Each member company then decides whether or not they will adopt the rates recommended. Naturally the Rating Committee tries to promulgate a programme that will be acceptable to as many of the members as possible in order to avoid chaotic conditions in the industry.

The Conference does strive for voluntary uniformity in rates on a fair basis, but it is not a condition of membership that the member companies adhere to the views of the majority. It has been the history of the Conference that individual member companies deviate from rate schedules approved by the majority.

. . .

Many member companies have deviations from the rating programmes varying all the way from surcharges in connection with certain types of individual risks to special rates for farmers, while there is at least one member company that always has a completely different set of Third Party Liability rates to the balance of the members."

With regard to the nature of the Eastern Conference's rating program, the submission of the I.A.C.I.C. to the Commission says in part:

"It will be remembered that the recommendations are not binding on Conference members. From time to time individual members have deviated from the recommended programme.

A study of the loss ratios of the members makes it evident that at least for the years 1956 and 1957 the recommended rates turned out to be far from adequate. In many cases the loss ratios exceeded the allowable 63% by a considerable margin."

Mr. C. A. Baines, Assistant Manager for Canada of the Zurich Insurance Company, and President of the Independent Automobile and Casualty Insurance Conference, also said in evidence that the recommendations in regard to rates were advisory and not mandatory:

"Q. But there is no fixing of commissions?

A. No.

Q. Or fixing of rates to begin with; is there any fixing of rates?

A. No, not in the sense of fixing. There are some advisory recommendations made from time to time with regard to rates.

Q. Could you be a little more explicit about what you mean by advisory recommendations to your members?

A. I think I can. The Research Committee of the Conference examines the statistics as they are produced year by year and produces a report concerning what in their view is the proper rate level to be applied.

Q. Then is that communicated to your members?

A. It is communicated to our members.

Q. Is there any obligation on your members to come up with the same rate?

A. None whatever.

Q. You find that that is a pretty satisfactory way of working, do you?

A. Yes.

Q. You told me there are some 30 companies in the automobile business operating in that manner without the fixing of premium rates?

A. That is correct."

(Hearing, pp. 344-45)

The General Manager's report for the year ending May 31, 1958, which appears in the Minutes of the I.A.C.I.C.'s Annual Meeting, June 16-19, 1958, makes the following reference to rating manuals:

"DISTRIBUTION OF MANUALS:

In Ontario 13 groups published a common manual which was distributed direct to agents and the cost shared.

It would be comparatively easy for other companies to join this group next year and it would be worth while to consider the same method of manual distribution in Quebec, if sufficient members wish to do so."

(Exhibit H-9)

The Minutes of the same meeting include the Annual Report of the Research Committee, in which the following appears:

"However, perhaps the most notable change during the past year was the fact that 13 member groups co-operated in the publication of a common automobile manual. I feel sure that those members who joined in this co-operative effort reaped the benefit in lower printing costs and also improved agency relationships due to the fact that it eliminated a great deal of duplication in agents' offices."

(Exhibit H-9)

(b) Rating Procedure of the Western Conference (W.C.I.A.I.C.)

In the case of the Western Canada Independent Automobile Insurance Conference, the rating process would appear to be substantially the same as that of the Eastern Conference. The return of information submitted by the Secretary-Treasurer of the Conference states that the final rating program adopted for the ensuing year has a basic premium only and any member may deviate from these suggested rates. The Minutes of the Conference make note of deviations from Conference rates by members from time to time.

Regarding the publication and issuance of a rating manual,

the Secretary-Treasurer's return of information contains the following statement:

"The Conference does not issue a rate manual in its own name, but the basic rates finally decided upon by the majority of the members of the Conference are forwarded to one printer to keep the cost in line. Each individual Company then orders its own manuals from the printer, inserting underwriting regulations and prohibited list according to its own underwriting rules. In addition to this members advise their own agents of any deviations or surcharges they require under their underwriting regulations."

(c) Rating Procedure of the B.C. Conference (I.A.I.C.B.C.)

The Independent Automobile Insurance Conference of British Columbia has a procedure for establishing premium rates which is substantially similar to that of the other two Conferences. The Manual and Rating Committee is responsible for the set-up and printing of the automobile rating manual, which is made available to members on much the same basis as the Western Conference. The return of information submitted by the Vice-Chairman of the Conference stated that:

"The rates so published are basic rates only and are subject to deviation by individual members as a result of their experience on different classes. Each company publishes its own underwriting instructions to its agents and any specific rating instructions which the company may wish to give in addition to or apart from the general information contained in the manual, and such information is included in the manual and distributed by the member companies to their agents.

Members of the Conference are not required as a condition of membership in the Conference to write at the same rates."

The Minutes of some of the meetings of the Conference, however, would seem to indicate that not only was adherence to the published rates urged on the members but that a very considerable degree of adherence to the recommended rates was in fact achieved. For example, the Minutes of the Conference meeting of January 11, 1951 contain the following:

"It was noted by the Chairman of the Conference that he had appealed at the last meeting for unanimity amongst the members in establishing the 1951 rating program. The Chairman expressed his thanks to those offices who had made sacrifices in order that our rates may be adhered to.

Duly moved and seconded that the recommendation of the Rating Committee be adopted for an indefinite time and a meeting to be called later if necessary to make any changes. (Hobson, Christie & Co. no vote)

CARRIED.

The representative for one member office reported that although they had authority from their Companies they would not make any move by themselves unless such move was made by the Conference as a whole."

5. Conclusions of Public Inquiries in Canada
with Respect to Rating Bureaus

Inquiries by Royal Commission into certain branches of insurance, including automobile insurance, have been made on two occasions in Ontario, and inquiry into the business of automobile insurance has also been made by Royal Commission in Nova Scotia and by a special committee of the legislature in Alberta.

The inquiry made by Mr. Justice Masten of the Supreme Court of Ontario and on which he reported in 1919⁽¹⁾ was concerned particularly with fire, automobile and other forms of property insurance and with the methods, rules, regulations and practices of associations of insurance companies and agents in those fields of insurance. Mr. Justice Masten found that in the various branches of insurance there were associations of insurance companies whose object was to safeguard the interests of members and to establish and maintain rates. Mr. Justice Masten dealt in more detail with the Canadian Fire Underwriters' Association but his conclusions in this regard had equal applicability to other branches. He found that the operations of such associations were of benefit to the public because of the special nature of insurance. In view of the fact that the actual cost of insurance cannot be determined until the lapse of the contract, past experience affords the only guide as to what rates should be. The experience must be that of many companies over a wide territory and over a period of years to provide a method for an even approximately equitable distribution of insurance cost. In the opinion of Mr. Justice Masten the determination of proper rates would be valueless unless steps could be taken to maintain them. Experience had shown that unrestricted competition between insurance companies led to rate cutting and eventually

(1) Ontario Report on Insurance Commission, King's Printer (Ontario) 1919.

to the failure or absorption of the weaker companies as well as to discrimination in rates in favour of large and influential buyers of insurance. Mr. Justice Masten also stated that combinations of insurance companies were justified because they operated to restrict competition in respect to commissions and thus limited the expenses of the business. While, as already indicated, Mr. Justice Masten found that the operations of the various company associations were beneficial to the insuring public, he considered that they should be fully subject to supervision and control by the state.

In summing up the advantages from the operations of the rate-making association, Mr. Justice Masten said:

" . . . such a combination tends strongly to maintain the solvency of the companies, to stabilize rates, to eliminate discrimination, and assist in controlling the expenses of carrying on the business." (1)

Recommendations were made by Mr. Justice Masten for supervision of the operations of fire insurance companies which applied equally to the business of automobile insurance. The recommendations and legislation which followed them are summarized in the Director's Statement as follows:

- "(1) That rating bureaus or associations engaged in fixing rates file their constitutions and By-laws with the Superintendent of Insurance to be subject to inspection by him in the same manner as insurance companies.
- (2) That no such rating bureau or rate-fixing association be required by law to file schedules of rates or a specific rate prior to placing of insurance. The Commissioner was of the opinion from consideration of the situation in Ontario that it was not in the public interest to require schedules to be filed as the effect probably would be to eliminate largely existing competition. He felt however, that the Superintendent should have authority, either on complaint or on his own motion to require a rating bureau or rate-fixing association to file details as to how a particular rate was made up.
- (3) Prohibition of any rate which discriminates unfairly between risks of the same hazard.
- (4) Authorization to the Superintendent, either on complaint

(1) Ibid., pp. 12-13.

or his own motion to review any rate fixed by a rating bureau or rate-fixing association to determine whether the rate was discriminatory and if so to order cancellation of the rate.

- (5) Authorization to the Superintendent to inquire into any other matter brought before him by an insured, insurer, rating bureau or rate-fixing association; that in the exercise of this authority the Superintendent act as a conciliator, making no order, but reporting his findings in his Annual Report.

Between 1924 and 1926 the above recommendations were substantially carried into legislation in Ontario and are now found in Part XV of the Insurance Act.⁽¹⁾ The legislation prohibiting discrimination in rates and authorizing the Superintendent to make inquiry in this respect and if necessary directing the discrimination to be removed was subsequently amended to provide that it should not come into force until proclamation and has not yet been proclaimed. The legislation relating to the second recommendation authorizes the Superintendent to require a return under oath from any rating bureau or licensed insurer showing any or every schedule of rates fixed, made or charged and prohibits deviation from the rates fixed and filed. The return authorized by this legislation however, has not been required by the Superintendent for many years."

(Statement, pp. 133-34)

None of the other provinces enacted legislation of a similar nature until 1958 when, as described below, the Automobile Insurance Act of Nova Scotia was amended following the report of a Royal Commission.

In his article, "An Evolutionary Pattern in Insurance Legislation", Mr. V. Evan Gray wrote with reference to the Masten Report and subsequent legislation:

"In Ontario, in 1917, the Honourable Mr. Justice C.A. Masten, as Royal Commissioner appointed to inquire into the fire insurance business, reported that

(1) R.S.O. 1950, C. 183

premium rate-fixing associations of underwriters were desirable in the public interest, but he also recommended a degree of governmental supervision and control of the rate-making procedure which has not been carried into legislation. Part XV of the Ontario Insurance Act (1924), respecting Rates and Rating Bureaus, is a mere salute to the subject matter of the report. Legislative policy in Ontario subsequently took another line - the encouragement of competition among insurers, by licensing foreign insurers of all reputable types - mutual, stock, reciprocals and Lloyds." (1)

As indicated in an earlier section, an inquiry into automobile insurance in Ontario was made by Mr. Justice Hodgins. Although he found that a particular increase in rates had not been made on a reasonable basis, Mr. Justice Hodgins in 1930 expressed the same conclusions as those of Mr. Justice Masten in 1919 that the operations of the Canadian Automobile Underwriters' Association were to the advantage of and in the interest of the public. The Report stated:

" . . . Nothing should be done, as it seems to me, to unreasonably or oppressively deal with those who are carrying on the business, in which they are allowed to combine for the purpose of experience and stability of rates, subject only to the fact that they must not unduly increase the price of insurance to the public.

On the other hand it was equally important, and in fact essential, that there should be in this complicated line of business, as I believe this to be, some sort of control over the rates which are charged to the public. . . ." (2)

Mr. Justice Hodgins had recommended in an interim report that insurance companies should be required to file adequate statistical data with the Superintendent of Insurance, and as described earlier in this report legislation to this effect was adopted in Ontario and a number of other provinces. Mr. Justice Hodgins also recommended that authority be given to the Superintendent of Insurance:

" . . . to order, after due notice and a hearing before him, an adjustment of automobile insurance rates whenever

(1) Canadian Bar Review, May 1950, Vol. 28, No. 5, 493 at pp. 506-7.

(2) Report on Automobile Insurance Premium Rates, King's Printer (Ontario), 1930, p. 58.

they are found to be 'excessive, inadequate, unfairly discriminatory, or otherwise unreasonable.'" (1)

Such authority Mr. Justice Hodgins thought was necessary in order to permit the Superintendent of Insurance to fix the proper loss ratio "either by agreement or by his decision, after a hearing of those concerned." (1)

A section authorizing the Superintendent to order adjustment of automobile insurance rates which he finds to be "excessive, inadequate, unfairly discriminatory, or otherwise unreasonable" is contained in the Ontario Insurance Act but has not been proclaimed. According to a circular of the Superintendent of Insurance of Ontario included in the brief of the C.U.A., insurance companies may be warned that sections of the Insurance Act not proclaimed may be brought into force if practices which they prohibit are engaged in, such as, for example, unfair discrimination in rates.

Legislation similar in nature was not enacted in any other province until 1958 when, as mentioned above, the Automobile Insurance Act of Nova Scotia was amended. Legislation in British Columbia provides that upon request an insurer is required to furnish to the Superintendent of Insurance copies of its tables of rates.

A special committee was appointed by the Alberta Legislature in 1948 to study all phases of automobile insurance. Its report concluded that in Alberta there was healthy competition between the Board, non-Board and mutual companies and that government regulation would tend to eliminate this competition without providing any advantage in its place. It was the conclusion of the Committee that for the present at least any attempt at rate fixing would work to the disadvantage of insurance companies and the public. (2)

In 1956 the Province of Nova Scotia appointed a Royal Commission of three members under the Chairmanship of Dean H. E. Read of the Faculty of Law, Dalhousie University, to inquire into the cost of automobile insurance in Nova Scotia and related matters, including the practicability and desirability of legislation to provide for a provincially-owned-and-operated automobile insurance department or bureau, and to make recommendations respecting such matters.

(1) Ibid., p. 63

(2) Report of the Special Committee Appointed at the 1948 Session of the Alberta Legislature to Study All Phases of Automobile Insurance, King's Printer (Alberta), February 15, 1949, p. 28.

The following conclusions were reached by the Commission as to the manner in which the C.U.A. had applied the rating formula:

- "A. On the basis of the evidence the Commission was able to obtain, the rate makers of the Canadian Underwriters Association have impartially applied the existing formula to the Nova Scotia experience in respect of private passenger automobiles and there is no apparent discrimination against any Nova Scotia insureds.
- B. On the basis of the evidence the Commission was able to obtain, the expense and profit provision of 37 percent is not unreasonable under the circumstances pertaining to the writing of automobile insurance in Nova Scotia.
- C. In the absence of rate regulation, the rate making agency is permitted free exercise of judgment. However, on the basis of the evidence the Commission was able to obtain, there was no indication of abuse of this freedom.
- D. The fact that the Statistical Agency of the Canadian Underwriters Association does not publish the results of loss reserves beyond 30 months from the inception of the policy year permits a redundancy to accrue to the insurer through the downward development of these reserves which is not accounted for in the loss experience. Recognition of the downward development of the loss reserves would eliminate any redundancy in them as they are used in the rate making process.
- E. Although, on the basis of the evidence the Commission was able to obtain, the rate-making process appears to have been conducted by the voluntary action of the insurers according to high ethical standards, the continuance of these high standards can be best assured by government having authority to regulate rates.

. . . " (1)

Recommendations of the Commission included the following:

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- (1) Report of Royal Commission on Automobile Insurance, Nova Scotia, Volume I, September 30, 1957, pp. 82-83.

- "1. That suitable steps be taken to ensure that insurers, individually file their expense experience in accordance with standard instructions that will enable some designated official or agency to produce periodically the country-wide expense experience on a basis which will enable testing of the reasonableness of the ratio of losses and expenses to premiums;
 2. that the Insurance Companies Act be amended by including provisions similar to Section 73 of the Insurance Act of Ontario authorizing the Superintendent of Insurance to require every insurer licensed to carry on the business of automobile insurance in Nova Scotia to file its Nova Scotia loss experience and its country-wide expense experience with him or with a statistical agency designated by him;
 3. that the Insurance Companies Act be amended by including provisions similar to those contained in Part XV, 'Rates and Rating Bureaux', of the Insurance Act of Ontario, authorizing the Superintendent of Insurance to require the filing of Nova Scotia automobile insurance rates and to require adjustment of those rates whenever it is found, after due notice and a hearing before him, that any such rates are excessive, inadequate, unfairly discriminatory, or otherwise unreasonable;
- . . . " (1)

As a result of the Read Report the Automobile Insurance Act of Nova Scotia was amended in 1958 to provide:

- (1) Every rating bureau must file with the Board of Commissioners of Public Utilities, copies of its constitution, articles of association and by-laws and a list of members, together with every revision or amendment to the foregoing.
- (2) Rating bureaus on behalf of their members and every licensed insurer not belonging to a rating bureau must make sworn returns to the Board showing every schedule of rates filed, made or changed, together with such further information as the Board may require.
- (3) That the Board be informed at least ten days in advance of any changes in rates or rules.

(1) Ibid., p. 84.

- (4) That it shall be an offence for any rating bureau or licensed insurer to deviate from its filed schedules of rates unless such deviation has been agreed to by the insured in writing or the deviation is justified to the satisfaction of the Board or the insured is insuring a fleet of not less than five vehicles under common ownership.
- (5) That it shall be an offence to deviate from filed rates by way of refund.
- (6) That every insurance company doing business in Nova Scotia shall prepare and file with a statistical agency designated by the Government of Nova Scotia a record of its automobile insurance premiums and of its loss and expense costs in Nova Scotia in a form approved by the Registrar of Motor Vehicles.
- (7) That the Board may of its own motion and shall when so requested by the Provincial Secretary make inquiry into the rates for any or all classes of automobile insurance in Nova Scotia.
- (8) That the Board may, after a hearing, order an adjustment of rates for automobile insurance whenever it finds such rates to be "excessive, inadequate, unfairly discriminatory, or otherwise unreasonable".
- (9) That a rate charged by an insurer for any risk shall not be presumed to be excessive for the sole reason that a lower rate is charged by a competing insurer.

6. Rating Bureaus and Rate Regulation in the United States

Prior to 1944 it had been held by United States courts that insurance was not "commerce" and was therefore not subject to such federal statutes as the Sherman Antitrust Act. In the South-Eastern Underwriters case of 1944 the Supreme Court overturned these precedents and declared that insurance was "commerce" and thus subject in its interstate aspects to the federal antitrust laws. In 1945 Congress passed Public Law 15, known as the McCarran-Ferguson Act, which exempted insurance from the antitrust laws to the extent that it was regulated by state law. All the state legislatures proceeded to pass regulatory laws. In the majority of states the laws were modeled after a draft fire and casualty bill which had been drawn up by a committee representing all sections of the insurance business in co-operation with the National Association of Insurance Commissioners. In nearly all states a regular pattern of control was established for fire and casualty rates.

The following are the usual features in the state laws:

- (1) The declared purpose is to regulate insurance rates in the public interest to the end that they should not be excessive, inadequate or unfairly discriminatory.
- (2) The factors to be considered in rate-making are detailed.
- (3) The rates are required to be on file for review by the Insurance Department before becoming effective.
- (4) The rates may be filed by a company independently or through a rating bureau.
- (5) No company shall be required to belong to a rating bureau.
- (6) The Insurance Department may refuse to approve a filing or may require its review after the passage of time.
- (7) Rating organizations are required to be licensed and are subject to examination by the Insurance Department.
- (8) Member or subscriber companies may deviate from the established rates upon satisfying the Department of the reasonableness of and justification for the deviation.
- (9) Companies are required to record and report their loss and expense experience annually in such form and detail as is required and prescribed by the Department to aid the latter in determining whether the rate filings comply with the law.
- (10) No insurer is required to record or report its experience on a classification basis inconsistent with the rating system filed by it.
- (11) Companies have the right of partial subscribership to the services of rating bureaus, i.e., they may, if they choose to do so, subscribe for only part of the rating information provided by a bureau without being obliged to subscribe for all of the bureau's rating information.

Although the majority of state laws require that proposed policies and rate schedules supported by judgment, experience, statistical data or other relevant factors must be filed with the Insurance Department of the state before being put into effect, there are some states which do not follow this procedure. California, for example, does not require the filing of rates or the initial approval of rates, although the insurance commissioner may investigate them at any time.

Divergent points of view have been expressed as to the effects under the various state laws of the regulation of insurance rates. Rating bureaus play a large part in the preparation of rates but non-member companies now have the right to subscribe to all or any part

of their services. It is the opinion of some students that the rate structure has been improved through a more accurate classification of risks and greater refinement of expense data. Offsetting factors are seen, however, in the costs of regulation and the delays and inflexibilities of formal regulatory procedures. In some states individual companies filing rate deviations or new classifications for rates have had their applications opposed by rating bureaus or disapproved by insurance departments, which has led to extensive hearings and litigation on appeal. In spite of these impediments to independent rate making some students have found that the new rate laws have encouraged independent filings and deviations from bureau rates not only on the part of mutual companies and direct-selling insurers but also by some stock companies. The McCarran-Ferguson Act contained provisions against boycott, coercion or intimidation which are reported to have led to the disappearance of most of the formal rules of organizations of companies and agents restricting the placing of business. Some economists who have examined practices under the new systems of rate regulation consider that healthy competition has been fostered, which should lead to more logical rate making and the more efficient operation of the insurance business.

CHAPTER IX

LOSS AND COST FACTORS IN RATING PROCEDURES

1. The Use of the Loss-Cost Ratio

The establishment of annual automobile insurance premium rates by Board organizations has involved the use of certain arbitrary factors in order to arrive at general rates. One set of factors which has been given special attention is the ratio of losses to costs as parts of the premium dollar. The provision of automobile or other insurance involves two financial aspects. These are the amount of claims paid to or for the insureds together with the direct expenses of investigating and settling claims and the other, the expenses of conducting the business of insurance, which include brokerage and commissions, administration expenses, premium taxes, indirect claims expense and provision for profit.

The expenses incurred in making adjustments and settling claims have been treated in different ways for different purposes. For rating purposes these adjustment and claims expenses are divided into allocated and unallocated expenses. For the preparation of the Statistical Exhibit the allocated claims expenses, which are those identifiable with a specific claim and which consist of legal and adjustment fees necessary to assess the loss, are reported as part of the losses. Unallocated claims expenses, which are those incurred in claims investigation but which are not identifiable with a specific claim, and which consist principally of the expense of maintaining a company's claim department, are considered as part of the cost factor.

Thus, under the statistical plan used in the Statistical Exhibit the components of losses and costs are as follows:

<u>Losses</u>	<u>Costs</u>
(1) Actual claims by insureds	(1) Brokerage and commissions
(2) Allocated claims expense	(2) Administrative expenses
	(3) Premium taxes
	(4) Provision for profit
	(5) Unallocated claims expense

In the annual returns required by government authorities, however, all claims expenses, that is both allocated and unallocated claims expenses, are treated as costs. Likewise the majority of companies appear to have treated all claims expenses as components of cost for the purpose of profit-and-loss statements. Thus the annual returns required by government authorities would require the following breakdown:

<u>Losses</u>	<u>Costs</u>
(1) Actual claims by insured	(1) Brokerage and commissions
	(2) Administrative expenses
	(3) Premium taxes
	(4) Provision for profit
	(5) Unallocated claims expense
	(6) Allocated claims expense

Although this was the practice followed by the majority of companies for profit and loss purposes, some, prior to 1953, followed the practice of including at least allocated adjustment expenses with losses, and since 1953 additional companies have discontinued treating such expenditures as expenses.

An important measurement in the determination of a company's or the industry's experience is the relationship of losses and costs as percentages of premium income. In this connection, however, an important distinction must be made between net premium income and earned premium income. Net premium income is the total of the premiums actually written, i.e., the sum of the amounts paid in or payable during the current calendar year, less re-insurance; but automobile insurance policies are normally written on an annual basis beginning at any time between January 1 and December 31 in any year. If a policy was written on October 1, by December 31 of that year it would have earned only 25 per cent of the total premium which was paid when the policy was written. As the possibility of incurring liability under the policy will continue until the expiry date on October 1 of the next year, 75 per cent of the premium will be earned in and at first glance would appear to be attributable to the calendar year following the year in which the policy was actually written. However, because some of the expenses included in the premium are immediately chargeable to that policy, e.g., the agent's commission, the company is not required to carry the whole 75 per cent of that premium in reserve for the following year. In Canada, for the protection of policy -

holders, companies are required to set aside 80 per cent of the unearned portion of each premium into a reserve account and carry this into the next year's operations.

For example, if an automobile insurance premium of \$100 were written on October 1, the amount of the premium available for the regular operations of the company would be \$40, i.e. \$25 to cover the period October 1 to December 31, plus 20 per cent of the balance (\$75) or \$15. The remaining \$60 (80 per cent of \$75) is carried into a reserve account for the following year. The \$40 available for the regular operations of the company in the year in which the policy was taken out is called the earned premium.

The foregoing may be summed up by saying that the earned premium income of a company in any calendar year consists of the 80 per cent reserve of unearned premiums carried over from the previous year, plus the net premiums for the current calendar year, less the 80 per cent reserve of the unearned premiums, the latter being carried over into the following calendar year.

While net premium is taken to determine the volume of business written by a company or for the industry the measure of insurance experience is the relationship of expenses and losses within the total earned premium income. In order to arrive at a measure of the experience of insurance companies a ratio of losses to costs is used in the production of the Statistical Exhibit by the C.U.A. The percentages have been changed from time to time and have varied with respect to different classes of risk. For purposes of illustration an example may be taken of a ratio of 53 per cent for losses and 47 per cent for costs, including provision for profit.

If the automobile insurers as a whole had an earned premium income of \$100,000,000 in a particular year, and had losses of \$53,000,000, the industry as a whole would theoretically have a normal operating profit, as \$47,000,000 would remain for expenses and profit. However, if the losses amounted to more than \$53,000,000, theoretically there would be either a reduced profit, no profit, or even a failure to cover the insurer's total costs. On the theoretical basis an increase in premium rates would be necessary to restore the stated ratio of losses to costs. If losses amounted to \$60,000,000 the industry would have required an earned premium income of

$$\frac{\$60,000,000 \times 100}{53} \text{ or } \$113,207,547 \text{ in order to have sufficient to}$$

pay its losses and still allot 47 per cent to costs including profit. To obtain this earned premium would necessitate a rate increase of 13.21 per cent ($\frac{113,207,547}{100,000,000} = 113.21$ per cent). Thus, the rates for the

following year should be increased by 13.21 per cent.

In adjusting rates in this manner it would have to be assumed, of course, that the ratio of losses to expenses for the industry was actually the same as the ratio selected. Even if the actual average for the industry was the same as the selected ratio there might be very wide differences in the ratios for individual companies, which would be the result not only of differences in efficiency but of different ways of doing business, as well as variations in loss experience.

2. Changes in the Loss-Cost Ratio

It will be apparent from the brief description of the use of the loss-cost ratio in the establishment of premium rates for automobile insurance that the particular ratio used by the rating bureau has great significance in the level of premium rates.

The Royal Commission inquiring into automobile insurance rates in Ontario in 1930 has previously been mentioned. The primary question which gave rise to the inquiry culminating in the report of Mr. Justice Hodgins was whether the rates fixed on February 1, 1929 by the Canadian Automobile Underwriters' Association (a predecessor of the C.U.A.) were reasonable. At that time, apparently, a ratio of 50-50 had been used in determining premium rates. In regard to the factor allocated to expenses the Hodgins Report stated:

"5. I find that the provision for expenses in the Public Liability, Property Damage, and Collision coverages for private passenger and commercial cars is not justified, and was unwarrantably increased. Apart from that addition, I find that there is no adequate or sound reason why the provision for expenses should be in excess of 45% of the gross premium rates and that the insurance companies should be left to make such adjustments in their various expense costs as will enable this percentage to produce a sufficient provision for expenses in the rates." (1)

It should be noted that it was also stated in the Hodgins Report that acquisition costs were 30 per cent and that this was "absorbed chiefly by the amounts paid for commission to local and producing or special, agents, . . ." (2) The Report concluded that the rates referred to were unreasonably high; that they had not been properly deduced from the experience then available to the companies; and that they were founded on no scientific or statistical basis.

(1) Report on Automobile Insurance Premium Rates, King's Printer
(Ontario), 1930, pp. 75-76.

(2) Ibid., p. 51.

The insurance industry accepted the finding in the Hodgins Report that the expense factor should not exceed 45 per cent as the basis for the loss-cost ratio when the Statistical Exhibit was begun in Ontario. The standard ratio of 55 to 45, i.e., that each premium dollar provided 55 cents for the payment of losses and 45 cents for company expenses and profits, remained unchanged until 1942 when the imposition of a 2 per cent federal premium tax resulted in a change to 53-47.⁽¹⁾

Subsequent changes in the loss-cost ratio are shown in Exhibit H-6, filed with the Commission. This is a statement prepared by Mr. Leipsic which appears to be consistent, with respect to the loss-cost ratio, with other information presented to the Commission.

If the rate of commission to insurance agents is taken as 25 per cent in the period prior to 1948 the following hypothetical breakdown can be made of the expense or cost factor in the 53-47 ratio of the period:

Period	Loss Factor	Expense Factor	Com- mission	Division of Expense Factor		
				Unallocated Loss Expense	Profit	Company Expenses including taxes, as- sessments, etc.
1942-48	53	47	25	6	2.5	13.5

The figures of 6 per cent for unallocated expenses and 2.5 per cent for profit appear to be drawn from data given in the Hodgins Report.

As described in an earlier chapter, the Board organizations in 1949 put into effect maximum commission rates of 20 per cent on private passenger automobiles, 15 per cent on commercial vehicles and 7½ per cent on inter-urban transport. No change was made in the loss-cost ratio in the case of private passenger automobiles, the 5 per cent reduction in commission being balanced by a 5 per cent increase in the allowance for company expenses, including taxes, assessments, etc. The expense factors in the case of commercial vehicles and inter-urban or public vehicles were set below the 47 figure by the difference in the rates of commission, after allowing for a corresponding 5 per cent increase for company expenses, including taxes, assessments, etc. The hypothetical breakdown of the expense factor then became as follows:

(1) Report of Royal Commission on Automobile Insurance, Nova Scotia, Volume I, 1957, p. 30.

Period	Division of Expense Factor					
	Loss Factor	Expense Factor	Com- mission	Unallocat- ed Loss Expense	Profit	Company Expenses including taxes, as- sessments, etc.
1948						
Private Passenger	53	47	20	6	2.5	18.5
Commer- cial	58	42	15	6	2.5	18.5
Public Vehicle	65.5	34.5	7.5	6	2.5	18.5

(Exhibit H-6)

In 1950 the commission rate in Quebec for private passenger automobiles was established by Board companies at $17\frac{1}{2}$ per cent and the expense factor became 44.5 for Quebec. The breakdown of the expense factor then became:

Period	Division of Expense Factor					
	Loss Factor	Expense Factor	Com- mission	Unallocat- ed Loss Expense	Profit	Company Expenses including taxes, as- sessments, etc.
1950-53	55.5	44.5	17.5	6	2.5	18.5

With the increase in automobile traffic, following the period of wartime control and shortages, the ratio of losses to earned premium income from automobile insurance rose, and as a result premium rates generally increased. A substantial increase was made in 1952 premium rates following an increase in the ratio of losses to earned premium income to approximately 65 per cent in the calendar year 1951. As will be seen from the example of the use of the loss-cost ratio given above, an increase in rates embraced the cost element as well as the loss element although it would not necessarily be the case that the costs of doing business would increase in the same way as the increase in losses. Increasing concern was felt in the insurance industry about continuing to increase automobile insurance rates on a basis which had been established under much different conditions, and in 1953 the loss-cost ratio used by Board organizations was changed to 63-37 for private passenger and commercial vehicles. The considerations leading up to this change were described, as follows, in a circular of March 9, 1953 from the President of the W.C.I.U.A. to agents:

" . . .

At a series of meetings, factors entering into the cost of Automobile Insurance were fully considered and the conclusion was reached that the public clamour, threat of more Government in business, competition of direct writers, and ordinary business morality and common sense called for the allocation of a somewhat larger percentage of the Automobile premium dollar for losses and loss expense, and a somewhat smaller proportion than in the past for selling and handling costs."

The question of the relationship of the cost factor of 47 per cent to the experience of insurers was examined by a committee on Expense Ratio Factor appointed by the Dominion Board Automobile Committee. This committee reported on May 9, 1952 as follows:

"The Committee is of the opinion that the present expense factors of 47% for private passenger automobiles (44.5% in the Province of Quebec) and 42% for commercial automobiles used in automobile insurance rate making statistics are higher than are justified by the published expense ratios of the majority of Insurers.

The Committee considers, in fact, that Automobile insurance is written at a demonstrably lower commission cost and believes that it is also written at a lower general expense cost than the average for all classes of business. In this belief the Committee is supported by the investigations which have been made by one or two of the larger automobile insurers into their costs of administering the business. The results of these investigations have suggested that Automobile business, being a mass-produced line, is being written at an administrative cost below the average of all classes of business.

The Committee believes, however, that the use of unduly high expense factors in rate making is unrealistic and, while not at the present time in favour of changing in any way the existing basis on which automobile insurance experience data is collated and published by the Statistical Agency, recommends that the Executive Committee and the Rates and Rules Committee should allow for suitable modifications in the expense ratio factors of 47% and 42% in their consideration of future rate programmes. For this purpose the Committee suggests the use of modified expense ratio factors of 42% for private passenger automobiles (40% in the Province of Quebec) and 37% for commercial automobiles."

The Automobile Committee of the Dominion Board explored the possibility of establishing a fixed fee for bodily injury and property damage as a means of remunerating agents in lieu of a percentage of the premium, but finally it was decided in 1953 to reduce commissions by 5 per cent and use a loss-cost ratio of 63-37 for both private passenger and commercial vehicles. The 37 per cent expense factor for private passenger automobiles represented a change of 10 per cent, 5 per cent of which was attributed to the reduction in commissions and 5 per cent to a reduction in the factor for company expenses. The reduction on commercial vehicles was 5 per cent in the total but as commissions were unchanged the difference was attributed to the company expense factor. The same change was made with respect to public vehicles. The breakdown of the expense factor may be shown as follows:

Period	Division of Expense Factor					
	Loss Factor	Expense Factor	Commission	Unallocated Loss Expense	Profit	Company Expenses including taxes, assessments, etc.
1953						
Private Passenger and Commercial	63	37	15	6	2.5	13.5
Inter-Urban Transport	70.5	29.5	7.5	6	2.5	13.5

The fact that the loss-cost ratio was not based on any exact accounting of the financial operations of insurance companies meant that the components of the hypothetical expense factor could not be precisely defined. This was clearly recognized by the insurance industry, as is indicated by the following statement in the February 1, 1953 issue of the Board Advocate, a Board publication, in regard to the 47 per cent expense or cost factor which was used from 1949 to 1952:

"Till now the industry has been operating on a rating formula adopted following a governmental inquiry into automobile insurance rates held in 1929. For private passenger vehicles, this rating formula was clearly definable as being divisible 53% for claims and 47% for expenses. The exact division of the 47% expense factor has not been so clearly definable and there has not been complete unanimity on the size of the components. The most universally accepted division was:

Agent's commission	20%
Unallocated claims expense	6
Companies' Adminis- trative expense	16
Companies' taxes	2.5
Companies' profit	2.5
	<u>47% "</u>

When the expense factor of 37 per cent was under consideration for 1953 the following explanation of its components was given to the Executive and Automobile Rating Committee of the W.C.I.U.A., according to the Minutes of a meeting on October 28, 1952:

" . . .

The expense factor of 37% is made up as follows:
Commission 15%; General Administration 13%, Taxes
and Board Assessments 4%; Profit 5%.

. . . "

However in the Minutes of a Western Conference meeting of February 23-25, 1953 reference is made to unallocated claims expenses of 6 per cent as one of the components of the expense factor:

"On the question of the breakdown of the premium dollar, it is noted that the loss factor is now sixty-three percent. Premium taxes, license fees, statistical service fees, and Assigned Risk charges amount to three percent and unallocated claims expense amounts to six percent. Thus we have a balance of twenty-eight percent, which is providing fifteen percent for acquisition cost, thirteen percent for other overhead and profit."

Another change made in the Board rating program for 1953 was the addition of a Trend Factor. This had originally been suggested as 20 per cent but there was considerable objection to so high a figure, some members feeling that it would offset the reduction made in the expense ratio to 37 per cent. It was also pointed out that experience as to increases in claims frequency and average cost of claim had not been uniform in all territories. A Trend Factor of 10 per cent was in the end included in the rating program for 1953.

The change in the loss factor from 53 per cent to 63 per cent was discussed between the C.U.A. and the Eastern Conference. The latter then undertook to join with the C.U.A. in approaching the

Ontario Superintendent of Insurance to have the new ratio used as the basis for the Green Book, as indicated in the following resolution adopted at an Eastern Conference meeting on December 8, 1952:

"It was moved and seconded that 'the Conference join with the C.U.A. in approaching the Superintendent of Insurance, asking that they present figures on the basis of a 63% loss factor'. Unanimously passed."

3. Experience of Insurance Companies in Relation to
Loss-Cost Ratios

The lack of definiteness in the components of the cost factor used by Board organizations for rating purposes and the absence of accounting records of insurance companies which would show the actual cost of conducting the business of automobile insurance precludes any accurate comparison of the actual experience of insurance companies in relation to the cost factor. The Director's Statement presents various analyses of financial returns submitted during the inquiry and the Commission received additional information in some of the briefs submitted. This material will now be considered.

Although maximum rates of commission on direct business were established for Board companies in 1948 all Board companies do not conduct their automobile insurance business in the same way so that it would not be expected that the ratio of commissions to net premiums or to total expenses would be the same. Available information indicates that the ratios vary considerably as is shown by the following table based on the returns to the Director of 15 Board companies or groups:

Commissions as a Percentage of Net
Premiums and of Expenses

<u>Net Premium Income of Company</u>	<u>1950</u>		<u>1951</u>		<u>1952</u>	
	Commis- sions as a % of Net <u>Premiums</u>	Commis- sions as a % of Expense Not a- vailable	Commis- sions as a % of Net <u>Premiums</u>	Commis- sions as a % of Expense Not a- vailable	Commis- sions as a % of Net <u>Premiums</u>	Commis- sions as a % of Expense Not a- vailable
Less than \$100,000	10.3 22.0 22.4	66.8 49.4	13.2 21.7 21.6	69.9 50.5	18.6 21.7 21.5	48.7 67.3
\$100,000 - \$500,000	2.5 23.9 22.4 19.7 17.8 19.3	12.1 43.9 50.4 57.6 49.3 55.2	2.5 22.9 21.6 19.8 17.8 19.2	10.3 39.9 50.7 54.9 50.1 52.0	24.2 2.5 21.7 18.9	43.9 14.8 48.8 43.1
\$500,000 - \$1,000,000	18.8 21.9 17.8 0.2	51.3 45.6 49.0 1.8	22.4 19.9 0.3 17.8	45.2 49.6 1.7 50.1	19.7 19.4 17.9 19.3	59.0 52.6 51.4 51.2
\$1,000,000 - \$2,000,000	23.0	60.2	23.1	61.2	17.9 23.2 0.2	51.4 54.9 1.2
Over \$2,000,000	18.6	43.4	18.5	42.0	18.5	52.8

With regard to unallocated claims expense, which is classed as one component of the cost factor, it is reasonable to conclude that there would be considerable variation among Board companies. That this is the situation is indicated in the February 1, 1953, issue of the Board Advocate in which the following appears:

"Unallocated claims expenses are those incurred by Companies in claims investigation, but not identifiable with a specific claim. Such expenses may differ considerably as between Companies due to variation in practices with, for example, some employing their own Company adjusters."

The Director received returns from 14 companies, including 3 Board companies, writing only automobile insurance. Only 5 of the 14 companies wrote a full line of automobile insurance, the others handling only "finance" business or other particular classes. As would be expected from the different methods and classes of business there was a substantial range in the ratio of expenses to earned premium income as the following table shows:

Ratio of Expenses to Earned Premium Income
(Automobile Insurance)

Ratio	Number of Companies		
	1950	1951	1952
Less than 20%	2	3	2
20% - 25%	1	2	2
25% - 30%	3	1	3
30% - 35%	2	1	1
35% - 40%	1	2	3
40% - 45%	2	2	1
45% - 50%	1	2	1
Over 50%	<u>1</u>	<u>1</u>	<u>1</u>
Total	<u>13</u>	<u>14</u>	<u>14</u>

(The highest ratio in each of the years 1950 to 1952 inclusive was 103%, 86.1% and 84.9% respectively, being the same company in each instance. Its net premium income in each year, however, was less than \$10,000).

Two of the Board companies wrote only physical damage insurance and in each case their ratio of expense to earned premium income averaged less than 20 per cent. In the period 1950-52 the lowest ratio of losses to earned premium income for either of them was

approximately 54 per cent and the highest 68 per cent. Each of these companies showed a profit in each of the three years and together over the three-year period showed a profit, before income tax, of approximately 18 per cent of net premiums written. However, being Board companies, they were required to follow Board rates which, in these three years, were established on the basis of loss and expense factors of 53 per cent - 47 per cent for private passenger vehicles, 58 per cent - 42 per cent for commercial vehicles and 65 per cent - 34½ per cent respectively for inter-urban transport and public automobiles.

Another tabulation contained in the Director's Statement shows the ratio of expenses to earned premium income for more than 100 companies. The Statement points out that many of the companies arrived at some or all of their expenses on a pro rata basis which would affect the accuracy of the results inasmuch as the general experience indicated that automobile insurance was written at a lower cost than some other forms of insurance. The table prepared by the Director is given below.

Ratio of Expenses to Earned Premium Income
(Automobile Insurance)

<u>Ratio</u>	<u>Number of Companies</u>		
	<u>1950</u>	<u>1951</u>	<u>1952</u>
Less than 20%	3	4	4
20% - 25%	3	2	3
25% - 30%	2	0	1
30% - 35%	12	14	6
35% - 40%	21	20	21
40% - 45%	31	33	37
45% - 50 %	21	24	26
50% - 55%	13	9	12
55% - 60%	2	6	4
Over 60%	<u>5</u>	<u>6</u>	<u>5</u>
Total	<u>113</u>	<u>118</u>	<u>119</u>

The brief submitted to the Commission on behalf of the C.U.A. includes a table based on the figures for premiums and claims given in the annual reports of the Federal Department of Insurance showing the ratio of losses and the percentage left for expenses and profit:

		" Net Premiums Earned	Net Claims Incurred	Ratio	Left for Expenses & Profit
1946	x	28,952,621	17,291,249	59.72	40.28
1947	x	40,788,040	24,870,148	60.97	39.03
1948	x	53,581,487	31,747,077	59.25	40.75
1949	x	66,303,644	38,694,830	58.36	41.64
1950	x	82,798,340	48,597,220	58.69	41.31
1951	x	98,804,314	65,356,498	66.15	33.85
1952	x	<u>121,526,813</u>	<u>76,466,235</u>	<u>62.92</u>	<u>37.08</u>
Sub-Total		492,755,259	303,023,257	61.50	38.50
1953		148,033,906	84,539,636	57.11	42.89
1954		164,825,085	88,032,865	53.41	46.59
1955		172,639,957	99,191,842	57.46	42.54
1956		185,935,156	126,066,493	67.80	32.20
1957		<u>208,499,731</u>	<u>148,894,989</u>	<u>71.41</u>	<u>28.59</u>
		879,133,835	546,745,825	62.19	37.81

x Earned Premiums not shown in Blue Book
Calculated on 50% basis. "

(Brief of Canadian Underwriters'
Association et al., p. 34)

It was pointed out in the brief that allocated expense costs in the foregoing table are not included with claims. It follows from this that in comparison with the Statistical Exhibit losses are understated and consequently expenses are overstated to some degree. As the brief further points out, the ratio of expenses and profit in the period 1946 to 1952 was substantially less than the figure of 47 per cent for costs used in the Statistical Exhibit and only averaged slightly more than 37 per cent for the period 1953-57 when the theoretical cost factor was 37 per cent.

With respect to these figures the brief states:

"Board companies had recognized the reduced expense factor and had not increased rates to the full extent justified by increasing loss experience as shown by the statistical exhibit and known trend factors. In the years 1953-1957 it will be noted that the Companies had left 0.81% more than the theoretical 37% for expenses."

(Brief of Canadian Underwriters'
Association et al., p. 35)

The fact that the ratio of 47 per cent prior to 1953 was not considered as realistic by Board companies has already been indicated. An estimate of the average expense ratio is given in a memorandum dated June 30, 1952 entitled "Automobile Rate and Commission Structure" which was attached to a circular letter of July 10, 1952 from the Chairman of the Dominion Board Automobile Committee. This memorandum included the following:

"At the present time the average expense ratio of the Board Companies writing all classes of business is of the order of 40%. It is generally recognized that Automobile business is a 'mass production' line, and that this class is probably written at an average expense ratio of about 35%. The Companies' break-even point, therefore, is 65% losses, 35% expenses. Dominion Government Returns for the 6 years 1946-1951 show that the losses paid by the Board Companies on the Dominion Government Return basis (which excludes certain adjustment fees and other allocatable loss expenses.) have been equivalent to an earned loss ratio, over the 6 years of 63.8%. The adjustment fees, etc. which the Dominion Government Returns do not treat as claim payments, but which are properly so treated for rate-making purposes, appear to amount to about 6% of the actual claim payments, giving an average 'loss cost' to the Board Companies, over the six years, of 68%, i.e. three full points over the break-even point.

The average commission rate to the local agent in respect of a typical portfolio of business is about 18%, so that a Company which is just about breaking even at the present time would have 17% (35% minus 18%) to meet its administrative costs, taxes, etc. Over the last six years, however, the figures show that the Board companies have on the average been 3% short of that provision, and have had only about 14% of premiums available for administration, etc. and profit."

As the above quotation indicates, the theoretical ratios have no significance in themselves but must be considered in the light of the actual experience of insurance companies. As shown by the information given earlier in this section there is significant variation in the operating costs of individual companies. The experience of individual companies with respect to loss ratios also shows considerable variation. Included in Exhibit H-8, which is the 26th Annual Statistical Number of the Canadian Underwriter, issued April 15, 1959, are 1958 figures for total net premiums earned, total net claims and adjusting expenses and the loss ratio for automobile insurance written by tariff, i.e. Board, and other companies. The following are the loss ratios for Board companies and groups composed wholly of Board companies and, by subtraction a percentage is obtained which may be termed, as above, left for costs and profits:

Name of Company	Loss Factor	Left for
		Costs and Expenses
	%	%
American Fore Group	83.27	16.73
Alliance Ass. Co. Ltd.	71.06	28.94
Alpina Ins. Co. Ltd.	96.09	3.91
Aetna Ins. Co.	49.79	50.21
Atlas Group	66.93	33.07
Boston Ins. Co.	50.97	49.03
Canadian Surety Group	63.69	36.31
Calvert Fire Ins. Co.	67.69	32.31
Century Group	59.96	40.04
Commercial Union Group	65.29	34.71
Dale & Co. Group	59.29	40.71
Eagle Star Group	78.87	21.13
Employers' Liability Group	63.72	36.28
Emmco Ins. Co.	51.33	48.67
Firemen's Fund Group	79.35	20.65
Great American Group	58.81	41.19
Guardian-Caledonian Group	69.21	30.79
Glen Falls	60.53	39.47
Hartford Group	68.13	31.87
Home Ins. Co. of N.Y.	86.35	13.65
London & Midland General	72.51	27.49
Legal & General Group	85.17	14.83
London Asssco. Group	58.35	41.65
London & Lancashire Group	65.04	34.96
Maryland Casualty Co.	61.70	38.30
New York Underwriters' Insurance Co.	58.79	41.21
Netherlands Ins. Group	66.87	33.13
New Zealand Group	68.55	31.45
New Hampshire Group	62.46	37.54
North British Group	69.46	30.54
Norwich Union Group	62.95	37.05

<u>Name of Company</u>	<u>Loss Factor</u>	Left for
		Costs and <u>Expenses</u>
	<u>%</u>	<u>%</u>
Northern Assurance Group	60.91	39.09
Pearl Group	59.43	40.57
Phoenix of Hartford Group	83.88	16.12
Phoenix of London Group	62.78	37.22
Prudential of England Group	68.58	31.42
Queensland Ins. Co.	67.09	32.91
Royal Exchange Group	61.99	38.01
Reliance Ins. Co. of Philadelphia	55.30	44.70
Service Fire Ins. Co.	67.93	32.07
Royal Liverpool Group	61.85	38.15
Sea-Scottish Insurance Group	73.35	26.65
Scottish Union Group	54.52	45.48
St. Paul Fire & Marine Group	51.55	48.45
Springfield Fire & Marine	64.39	35.61
Societe Nationale D'Assurances	60.10	39.90
Sun Group	68.61	31.39
Travellers Group	61.03	38.97
Union of Canton Group	57.20	42.80
United States Fire Ins. Co.	49.29	50.71
U.S.F. & G. Group	73.25	26.75
Victoria Ins. Co. of Canada	98.57	1.43
Western Group	62.03	37.97
Westchester Fire Ins. Co. (1)	-	-
World Auxiliary Ins. Corp.	53.45	46.55
Yorkshire Group	66.31	33.69

(1) Net premiums Earned = - \$162
 Net Claims and
 Adjusting
 Expenses = \$19,618

For the reasons already outlined the figures tabulated above do not convey any direct information as to the expenses or profits of the individual companies or groups.

The brief of the C.U.A. clearly recognized that there were differences in the costs of individual companies. Under the heading, "What is cost to one company may be something else to another" the brief quoted the following comment from the Report of the Nova Scotia Royal Commission on Automobile Insurance:

"It will be readily seen from the above brief outline of the types of companies in Nova Scotia and of the methods employed by them in the conduct of their automobile insurance business in the Province that there is no established,

set, standard method of conducting automobile insurance business in Nova Scotia and that no over-all pattern of doing this business exists. What may represent a 'cost' to one company, for example, the acquisition cost of commission, local and general or local only, does not represent 'cost' to another company for the simple reason that it does not pay commission. On the other hand, the saving in the commission cost may be more than offset by greater advertising cost, a cost which in the case of the former company was only nominal." (1)

The C.U.A. brief also referred to differences in efficiency among insurance companies as follows:

"If all Companies were working on the same loss cost statistics, but were each using their own expense figures, competition will inevitably centre on the latter. Clearly such competition will favour the administratively efficient insurer, at the expense of the less efficient, and, in general, the large writer with a volume justifying the maximum use of mechanical and electronic methods will be able to operate more efficiently than the small writer. A comparison between them will parallel the comparison between the modern and rapidly developing grocereria chains and the local corner store, the insurance equivalent of the corner store suffering the added disadvantage that it cannot operate on typical corner-store methods because of the necessity of obtaining an adequate spread of risk."

(Brief of Canadian Underwriters'
Association et al., p. 33)

With respect to the relationship between size of company and ratio of expenses to earned premium income the Director's Statement contains the following:

" . . . Some variation in this ratio (of expenses to earned premium income) as between companies naturally would be expected depending on the size of operations and type of automobile insurance written; e.g., lower commissions were paid on commercial automobile insurance and interurban transport, etc. insurance, than on private passenger automobile insurance. In fact, the range of the ratio between comparable companies is quite

(1) Report of Royal Commission on Automobile Insurance, Nova Scotia, Volume I, September 30, 1957, pp. 20-21.

substantial, e.g., as between two companies each writing between \$1 million and \$2 million in automobile insurance in each of the above years, the ratio of one was between 15 and 17 percentage points lower than the other in each year."

(Statement, p. 211)

The brief submitted to the Commission by the Independent Automobile and Casualty Conference contains a schedule showing expenses in relation to net automobile premiums in 1957 and for the period 1953-56 for 25 companies. The table is as follows:

" SCHEDULE 'A'

COMBINED

(25 Companies)

I.A.C.I.C.

AUTOMOBILE EXPENSE RETURN

<u>YEAR - 1957</u>		<u>%</u>
1. Net automobile premiums written in All Provinces less return premiums and all reinsurance	\$ 53,324,211.	
2. Net automobile commissions, less reinsurance commissions (including profit commissions)	\$ 9,432,740.	17.69
3. Automobile Department salaries (and pensions) for head office	\$ 2,207,113.	4.14
4. Unallocated Automobile Claims Adjustment Expenses, i.e. Claims Department salaries (and pensions) and travelling expenses, including expense of automobile maintenance, and replacement for all head office and branch employees	\$ 1,880,909.	3.53
5. All Other Automobile Expenses	\$ 6,519,897.	12.23
6. Premium Taxes on automobile insurance	\$ 1,140,158.	2.14
TOTAL AUTOMOBILE EXPENSES	\$21,180,817	39.72

NOTE: If Automobile profit commission cannot be segregated, include the percentage of profit commission represented by the percentage of automobile premium to the total premium income.

For purposes of simplicity and uniformity it is requested that Item 4 -- Unallocated Automobile Claims Adjustment Expenses -- and Item 5 -- All Other Automobile Expenses -- should be calculated on a pro rata basis, namely the percentage that automobile premiums bear to premiums in all departments.

YEAR - 1953 - 1956

1. Net automobile premiums written in All Provinces less return premiums and all reinsurance. \$189,674,647.
2. Total automobile expenses including taxes and commissions calculated on a pro rata basis, namely the percentage that automobile premiums bear to premiums in all departments. \$ 77,015,450. 40.60

Groups: 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31.

DATE: November 7th, 1958. "

(Brief of Independent Automobile and Casualty Insurance Conference, Schedule "A")

It will be seen from the explanatory note in the table that unallocated automobile claims adjustment expenses and all other automobile expenses were prepared on a pro rata basis. Automobile profit commission was also to be prorated if it could not be segregated. The information given earlier as to the costs of writing automobile insurance in relation to costs in other insurance fields would have to be kept in mind in considering the above table.

The following comment on the use of industry statistics for rating purposes is contained in the Director's Statement:

"Rating is based largely on experience. Most companies are dependent, for this experience, on statistics indicating the industry's experience. The preparation of industry statistics requires that individual companies' statistics

be converted to some common basis. The rates upon which industry statistics are compiled are Board rates and the loss ratio is predicated upon the income from such rates, while the expense ratio is purely an arbitrary factor which may or may not reflect the experience of any or all the companies. In other words, while a statistical computation such as the Statistical Exhibit is useful and probably necessary in the establishment of a rating program, it should be appreciated that the expense factor used as a basis is an arbitrary one and the actual expense factor will vary from company to company. The loss factor upon which a company can profitably operate will vary with the actual experience factor. When rates are established, for an individual company, based upon a loss ratio so derived, the resulting premium rates would be inaccurate to the extent that the company's actual expenses differ from the arbitrary expense factor used in the statistical compilation. Under the present system, in so far as Board rating procedures are concerned, if the losses, including allocated adjustment expense, exceed 63 per cent of earned premium income, then a rate increase is indicated and Board rates are binding upon the members. Conference rating programs, in turn, are based on the same loss and expense factors as Board programs and, as has been illustrated, Board rates substantially influence Conference rating programs and frequently those of independent companies in an even more direct manner. In other words, Board rates are to a considerable extent the umbrella under which non-member companies' rates are established.

The explanation given by many companies as to the reason why expenses of underwriting automobile insurance were not accurately determined was because company books of account were designed to facilitate production of annual data for the Federal Department of Insurance which did not require segregation of automobile expense. Obviously, however, the Federal Department is not concerned with rates but rather with the financial stability of its licensees and therefore of the industry. If a company's overall financial position is sound, it is not a matter of concern to the Department that such company is operating profitably on some lines and unprofitably on others, so long as its policyholders are adequately protected. Notwithstanding that automobile insurance is apparently written at a lower cost than other lines, no thought appears to have been made to adjust the expense factor, other than by reduction in agents' commissions until such a move was prompted by desire to avoid possible government intervention, public objection to high rates and the threat of potential competition of direct writing insurers."

(Statement, pp. 227-28)

4. Some Results of Using Loss-Cost Ratios as a
Basis of Insurance Rates

The Director's Statement gives a number of examples of the effect of the apportionment of a specific percentage of the premium dollar for expenses in leading to wide differences in the dollar amounts contributed by different insureds toward expenses. It is readily seen that when a uniform percentage is applied to varying premium amounts there will be differences in the dollar amounts attributed to expenses proportionate to the differences in the amounts of the total premiums. Likewise when a percentage increase is made in premium rates because of a higher loss ratio both the loss portion and the expense portion will be increased proportionately to the scale of increase. The question thus arises whether expenses of conducting the business of automobile insurance vary directly with the amount of the premium. It is true that some expenses such as premium taxes are directly related to the premium rate and in the case of Board companies association dues are also a factor of the premium. When the agent's commission is a percentage of the premium this expense item is also directly related but this raises the further question whether the agent's expenses vary directly with the premium.

The following observation is made in the Director's Statement:

" . . . when rates are increased on the basis of past experience and on the basis of the arbitrary loss-cost ratio, inequities frequently result . . ."

(Statement, p. 303)

The brief of the C.U.A. makes the following comment on the Director's observation:

"The Director, in making this observation, which is a statement of fact, overlooked the reasons why rates are higher in one territory than another. The most obvious reason is a higher claim frequency, but there may also be a higher cost of claim. A higher claim frequency obviously means greater expense in handling individual claims. A high average cost of claim necessitates more careful scrutiny of individual claims and more claims supervision expense. Whichever is the reason for the higher rate, business in the territory concerned is more hazardous; calls for more intense underwriting scrutiny; and will absorb more of the time of officials engaged in general administration. Further, the higher the hazard (which is, obviously,

measured by the premium rate) the more liable the experience is to violent fluctuation, and the greater are the margins which the Company must maintain; the greater, also, is the profit allowance which the Company deserves for carrying the risk. Finally, premium taxes bear a direct relationship to premium rate.

Thus, the major part of the expense factor is, of its very nature, directly or indirectly related to the size of the loss factor and, hence, the premium rate. . . ."

(Brief of Canadian Underwriters'
Association et al., p. 36)

The effect of applying an average rate of increase to both loss and cost elements in the premium was considered in the Hodgins Report previously referred to. Automobile insurance rates had been increased at that time and in referring to the average overall increase of 31 per cent the Report stated:

"To this extent the increase thus made to the provision for expenses establishes, in my judgment, in view of all the evidence, an unusual and unscientific addition to the 1929 rates, and so makes them to that extent unreasonable. From the beginning to the end of the evidence no suggestion or hint has been given of any other distribution, or that the 31% average increase was wholly or in part, required for expenses, and no ground whatever is made for the increase of 31% in regard to any items of expense -- except for Acquisition Cost -- and that answer was only that 30% is the Bureau's Commission rate. That is no answer whatever as to its reasonableness.

By the increase the agent's commission went up and each of the other items likewise without any attempt at justification, whereas the unincreased amounts have all along been represented as satisfactory to the agents and the companies concerned." (1)

The conclusion expressed in the Hodgins Report is referred to in the memorandum of June 30, 1952 entitled "Automobile Rate and Commission Structure", which was attached to a circular from

(1) Report on Automobile Insurance Premium Rates, King's Printer (Ontario), 1930, pp. 50-51.

the Chairman of the Dominion Board Automobile Committee and has been mentioned previously. The memorandum proposed the introduction of a fee basis to cover costs which do not vary directly with loss experience. The memorandum stated:

- "2. The Committee consider that the Industry's main problem is that of producing an adequate market for all reasonably insurable risks. They believe the present extreme stringency of the market results from an inadequacy of the general rate level, and that the stringency will continue until rates of premium make adequate provision for anticipated loss costs. In recent years, loss costs have risen rapidly. The Industry has been reluctant to impose the increases in premium which known increases in loss costs required, and still more reluctant to give full credence to trend, so as to bridge the two year gap between the latest business for which statistics are available and the business to which the rates will apply.
3. This reluctance to promulgate rates allowing adequately for anticipated loss costs is a result of the criticism of rising Automobile insurance rates which the industry has had to face from all directions. If that criticism were directed only against the loss cost portion of the premium rate, the Industry would have a perfectly good defence which the man in the street could understand and accept; the general public may not be fully aware of the financial effect of the growing toll of road accidents, but is quite aware of that growth. The Industry is not, however, in so strong a position with regard to the expense factors. Twenty years ago, Mr. Justice Hodgins said that he could understand the reason for an increase in the claims cost part of the premium, but not for a pro rata increase in the expense cost part. Although today we have to face costs which have increased considerably since Mr. Justice Hodgins made that comment, it is still impossible to justify an increase of 25% in expense loadings, only because there is an increase of 25% in loss costs; it is even more clearly impossible to justify expense loadings in territory 'A' being twice what they are in territory 'B', just because the loss cost in the former territory is twice what it is in the latter."

The memorandum then went on to suggest a scale of agents' fees for bodily injury and property damage insurance with a lower fee applying in those provinces with safety responsibility laws and presumably a higher proportion of insurance coverage.

The memorandum continued:

"6. The Committee believes that the arguments in favour of a fixed fee for the Agent in lieu of his present commission, apply equally to the provision for the Company's administration expenses; there seems no reason why increased loss costs in one territory as compared with another should involve the policyholder in the first territory in making a contribution to the Company's general expenses greater than that of the policyholder in the second territory and possibly considerably greater than the actual cost of putting his policy on the books and maintaining it there. However, part of the 'expenses' incurred by the Company consist of taxes and Board assessments which are directly related to premium income, while the allowance for profit and contingencies which the Companies are entitled to expect should clearly be related to the extent of the hazard, which is measured by the premium rate. Therefore, the Committee consider that the rating formula to be used in the future should be based on the assumption that the allowance to the Companies for their general administration expenses should be a flat fee equal to that allowed to the Agent for the territory in question, together with 4% of the premium to cover taxes and Board assessments, and 5% to cover profit and contingencies. The Committee is convinced that the routine work of the Companies is greater than that of the Agents, and that the Companies are being generous in limiting themselves to the same flat fee and cannot be expected to forego a proper allowance for profit and contingencies."

As previously mentioned, the changes in the rating program for 1953 were not made along the lines proposed in this memorandum but were accomplished by a reduction in the percentage rate of agents' commissions and in the expense factor, thus resulting in the loss-cost ratio of 63-37.

CHAPTER X

DISTRIBUTION OF AUTOMOBILE INSURANCE BUSINESS AMONG BOARD, CONFERENCE AND INDEPENDENT COMPANIES

The Director's Statement contains figures showing, for each of the three years, 1950, 1951 and 1952, for each of the several provinces and for Canada as a whole, the total net automobile insurance premiums written by the various classifications of insurance companies, viz., Board companies, Conference companies, independent companies and Saskatchewan Government Insurance Office. It will be remembered that there is no Conference organization in any of the four Maritime or Atlantic Provinces, the distribution in those provinces being between Board and independent or non-Board companies. Further, the great majority of the Saskatchewan Government Insurance Office's business is written in the Province of Saskatchewan.

The Director's figures also give the percentage of the total premiums written in each of those years in each province and in Canada as a whole, by each classification of company.

The Commission desired to obtain a more up-to-date picture of the evolution of market shares between the various classifications of companies, without engaging in a major statistical investigation. It was felt that figures for one additional year, 1957, which proved to be the most recent year for which complete figures were available, would be adequate for this purpose. To obtain a complete picture it was considered necessary to obtain the amount of net automobile premiums written in each province of Canada by each and every company transacting automobile insurance business in Canada.

For this purpose it was found that the Annual Report of the Superintendent of Insurance for Canada was inadequate, since it does not contain individual company figures for companies licensed by the provinces, and since it does not give a breakdown of the individual companies' business by provinces, but only the provincial totals of all Dominion registered companies. The Commission has therefore relied mainly upon the Annual Reports of the provincial Superintendents of Insurance.

Full information with respect to seven provinces for 1957 was available in the annual reports of their respective Superintendents

of Insurance. The remaining provinces were Nova Scotia, Prince Edward Island and Manitoba. In Nova Scotia and Prince Edward Island no annual reports are published. However since only Dominion registered companies are licensed to do business in those provinces, complete coverage of the required information was obtained from the company reports filed in the office of the federal Superintendent of Insurance. For Manitoba, where the provincial report deals with premiums earned, rather than with net premiums written, figures for Dominion registered companies were likewise obtained from the office of the federal Superintendent of Insurance and those for provincially authorized companies were obtained directly from the Superintendent of Insurance for Manitoba.

While some slight inaccuracies may exist in the figures the Commission has obtained, we are satisfied that they are substantially correct. Comparison of the total of premiums for Canada obtained in this way with the total given in the Report of the Superintendent of Insurance for Canada for the year 1957, shows the former is somewhat greater than the figure in the report, i.e., \$263,675,672 as compared with \$256,747,317. The difference is \$6,928,355 or about 2.7 per cent. Most of this difference arises from the fact that the federal Superintendent's figures for 1957 include only the voluntary premiums of the Saskatchewan Government Insurance Office, while the figures obtained by the Commission include also the compulsory premiums of that office, which in 1957 amounted to \$5,441,380.

The Commission further desired to ascertain as nearly as possible what changes had occurred in company affiliation in this and other provinces during this period. For this purpose a careful analysis of the relevant information contained in the issue of Canadian Underwriter of April 15, 1958 was made. This document gives a summary of the business experience of each company doing business in Canada in 1957, and indicates whether it was a Board or non-Board company. It also indicates with which of the Board Associations and Conferences in the several areas of Canada each company was affiliated. The Commission believes the data in this document is reasonably accurate. The information thus obtained concerning company affiliation was then compared with the figures in the Director's Statement for 1952.

Our opinion that the figures obtained as outlined above are reasonably accurate is confirmed in part by particulars furnished the Commission during the inquiry by the Provincial General Insurance Agents of Nova Scotia for that province and the brief of the C.U.A. in respect of Ontario. The Nova Scotia agents' organization stated that the premiums of Board companies in 1957 amounted to \$4,339,127 out of a total of \$7,534,062 for the province. This is about 57.6 per cent. The figure derived by the Commission, based on a total of

\$7,534,063 for 1957, and on Board membership in 1957 is 59.4 per cent, a difference of 1.8 per cent, which is not regarded by the Commission as being of great significance. The brief of the C.U.A. gave the proportion of Board business in Ontario for 1956 as 34.8 per cent. The figure derived by the Commission for 1957 is 34.7 per cent, which suggests that the change from year to year in that large province is not of great magnitude.

It must be noted that the figures derived by the Commission can only be regarded as approximate and not exact. Throughout the balance of this chapter this fact is repeatedly indicated by the use of the word "about".

In the tabulations which follow, the figures for the years 1950-52 are taken from the Director's Statement, and the figures for 1957, derived from the sources indicated, are then given. The provinces are dealt with separately, commencing with Newfoundland and moving westward to British Columbia. Finally, the figures for the whole of Canada are given.

1. Newfoundland

<u>Year</u>	<u>Net Premium Income</u>				<u>Total Net Premium Income</u>
	<u>Board Companies</u>	<u>% of Total</u>	<u>Non-Board Companies</u>	<u>% of Total</u>	
	\$		\$		\$
1950	570,361	81.7	128,012	18.3	698,373
1951	658,872	83.0	135,101	17.0	793,973
1952	1,167,336	77.8	333,045	22.2	1,500,381
	<u>2,396,569</u>	<u>80.1</u>	<u>596,158</u>	<u>19.9</u>	<u>2,992,727</u>

(Statement, p. 272)

1957	1,306,616	46.1	1,528,888	53.9	2,835,504
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The figures from the Director's Statement show clearly that in the years 1950-52 about 80 per cent of the automobile insurance business in Newfoundland was written by Board companies. The Statement contains additional information concerning this period as follows:

About 97 per cent of the remaining business was written by three companies, the General Exchange Insurance Corporation, the Lloyds Underwriters, and the Dominion of Canada General Insurance Company. The premium rates charged by Lloyds were in some cases the same as Board company rates, in others slightly higher or lower.

The rates of the other two companies, accounting for 62 per cent of the non-Board business, were either the same or substantially the same as Board company rates. It should be noted that in 1952 the percentage of business written by Board companies dropped from 83 per cent in 1951 to 77.8 per cent.

In 1957 a very different picture is shown. Board company business had increased in terms of dollars, about \$139,280 or 11.9 per cent, but the percentage of business written by Board companies had dropped sharply, from 77.8 per cent in 1952 to 46.1 per cent in 1957. Non-Board or independent company business, which from 1951 to 1952 had increased, in terms of dollars, from \$135,101 to about \$330,000, and percentagewise from 17 per cent to 22.2 per cent, showed a tremendous increase in 1957. In terms of dollars the business written by independent companies was about \$1,528,888, over four and one-half times that in 1952, and percentagewise it had grown from 22.2 per cent to about 53.9 per cent of the provincial totals.

Information concerning company affiliations, derived by the Commission from the sources described above, indicates that, of the companies classified by the Director's Statement as Board companies in 1950-52, 17 were independent in 1958. These companies had net premiums written in 1957 amounting to about \$90,000.

2. Prince Edward Island

Net Premium Income

<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Non-Board Companies</u>	<u>% of Total</u>	<u>Total Net Premium Income</u>
	\$		\$		\$
1950	244,650	89.8	27,843	10.2	272,493
1951	283,525	87.6	40,004	12.4	323,529
1952	375,994	92.7	29,717	7.3	405,711
	<u>904,169</u>	<u>90.3</u>	<u>97,564</u>	<u>9.7</u>	<u>1,001,733</u>

(Statement p. 273)

1957	437,687	68.4	202,282	31.6	639,969
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The figures from the Director's Statement show that in the years 1950-52 about 90 per cent of the automobile insurance premiums in this province were written by Board companies. In those years only two significant non-Board companies were selling in this market, viz., the London & Edinburgh Insurance Company Limited,

which discontinued writing in Prince Edward Island in 1952, and the General Exchange Insurance Corporation. In 1952 the latter company sold 91 per cent of the non-Board insurance and, as in Newfoundland, its rates were substantially the same as Board rates. It is noted that in 1952 the percentage of the total automobile business written by Board companies increased from 87.6 in 1951 to 92.7 in 1952, this increase probably being due to the withdrawal from the field of the London & Edinburgh Insurance Company, which in 1950-51 had written about 62 per cent of the non-Board business.

In 1957, as in Newfoundland, a very different picture appears. Board company business had increased in terms of dollars, by about \$61,693 or 16.4 per cent, but the percentage of business written by Board companies had dropped from 92.7 per cent in 1952 to about 68.4 per cent in 1957. Non-Board or independent company premiums had increased in dollars from \$29,717 to about \$202,282, and percentage-wise from 7.3 per cent in 1952 to about 31.6 per cent in 1957.

Our information concerning continuity of Board membership indicates that 41 companies classified as Board companies in 1952, were classified as independent in 1958. Many of these companies wrote very small amounts of insurance in 1957, when the total net premium income of the 41 was only about \$92,000. It also appears that only 3 of these 41 companies were classified as independent in Ontario in 1958.

3. Nova Scotia

Net Premium Income

<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Non-Board Companies</u>	<u>% of Total</u>	<u>Total Net Premium Income</u>
	\$		\$		\$
1950	3,089,343	80.4	753,253	19.6	3,842,596
1951	2,935,216	79.2	770,377	20.8	3,705,593
1952	3,758,666	80.1	933,360	19.9	4,692,026
	<u>9,783,225</u>	<u>79.9</u>	<u>2,456,990</u>	<u>20.1</u>	<u>12,240,215</u>

(Statement, p. 274)

1957	4,477,983	59.4	3,056,080	40.6	7,534,063
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The figures from the Director's Statement show that in the years 1950-52 about 80 per cent of the automobile insurance premiums in Nova Scotia were written by Board companies, and also that

there was very little percentage variation during that period. In addition, the Director's Statement states that the rates of five non-Board companies, accounting for 60 per cent of the non-Board business in this period, were substantially the same as Board rates.

Once again, a substantial change in the picture is seen in 1957. Board company business had increased in terms of dollars from \$3,758,666 in 1952 to about \$4,477,983 in 1957, but Board company share of the total automobile insurance business in Nova Scotia had dropped from 80.1 per cent in 1952 to about 59.4 per cent in 1957. Non-Board or independent company premiums had increased in dollars from \$933,360 in 1952 to about \$3,056,080, and percentage-wise from 19.9 per cent in 1952 to about 40.6 per cent in 1957.

Our information concerning continuity of Board membership indicates that 13 companies classified as Board companies in 1952 were independent in 1958, and that these 13 companies wrote premiums in 1957 of about \$600,000.

4. New Brunswick

<u>Net Premium Income</u>					
<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Non-Board Companies</u>	<u>% of Total</u>	<u>Total Net Premium Income</u>
	\$		\$		\$
1950	1,968,373	88.7	250,428	11.3	2,218,801
1951	2,294,422	88.3	302,573	11.7	2,596,995
1952	2,883,115	86.7	442,859	13.3	3,325,974
	<u>7,145,910</u>	<u>87.8</u>	<u>995,860</u>	<u>12.2</u>	<u>8,141,770</u>

(Statement, p. 275)

1957	4,340,381	69.4	1,913,403	30.6	6,253,784
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The figures from the Director's Statement show that in the years 1950-52 about 88 per cent of all automobile insurance premiums in New Brunswick were written by Board companies, a drop of about 2 per cent occurring between 1950 and 1952. The Director's Statement further states that the rates of four companies, which accounted for approximately 36 per cent of the non-Board business, were substantially the same as Board rates.

As in the case of the other provinces dealt with above, a substantial change is seen in 1957, though the trend to independent

companies is not so pronounced. Board company premiums had increased in terms of dollars from \$2,883,115 in 1952 to about \$4,340,381, but Board company share of the total automobile insurance business in New Brunswick had dropped from 86.7 per cent in 1952 to about 69.4 per cent in 1957. Non-Board or independent company premiums had increased in dollars from \$442,859 in 1952 to about \$1,913,403 in 1957, almost the same increase as that of the Board companies. However, percentagewise, the share of non-Board companies had increased from 13.3 in 1952 to about 30.6 in 1957.

Our information concerning continuity of Board membership indicates that 7 companies that were classified as Board companies in 1952 were independent in 1958, and that their net premium income written in 1957 was \$78,327.

5. Quebec

<u>Net Premium Income</u>							Total Net Premium Income
<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Conference Companies</u>	<u>% of Total</u>	<u>Independent Companies</u>	<u>% of Total</u>	
	\$		\$		\$		\$
1950	12,858,673	46.0	7,084,562	25.3	8,024,119	28.7	27,967,354
1951	14,900,026	45.0	8,132,608	24.6	10,046,305	30.4	33,078,939
1952	17,815,578	44.5	8,788,979	22.0	13,412,588	33.5	40,017,145
	<u>45,574,277</u>	<u>45.1</u>	<u>24,006,149</u>	<u>23.8</u>	<u>31,483,012</u>	<u>31.1</u>	<u>101,063,438</u>

(Statement, p. 276)

1957 23,682,959 32.0 11,310,303 15.3 38,973,091 52.7 73,966,353

The figures in the Director's Statement indicate that in the years 1950-52 Board companies enjoyed less than half of the total business, a position different from that which prevailed in the four Atlantic Provinces. In those years Board companies wrote about 45 per cent of all automobile insurance premiums in the province, Conference companies about 24 per cent and independent companies about 31 per cent. In terms of dollars the premiums of all three groups increased each year, but percentagewise Board company business dropped about 1.5 per cent and Conference company business over 3 per cent, while independent company business increased almost 5 per cent.

Once again, a substantial change is seen in 1957. In terms of dollars the business of all three groups had increased, but percentagewise Board company business had dropped from 44.5 per

cent in 1952 to about 32.0 per cent in 1957, and Conference company business from 22 per cent in 1952 to about 15.3 per cent in 1957, while independent company business had increased in the same period from 33.5 per cent to about 52.7 per cent.

Our information concerning continuity of Board membership indicates very little change in this province between 1952 and 1958. It appears that four companies which were classified as Board companies in 1952 were independent in 1958, and that in 1957 their net premium income was \$23,476.

6. Ontario

<u>Net Premium Income</u>							
<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Conference Companies</u>	<u>% of Total</u>	<u>Independent Companies</u>	<u>% of Total</u>	<u>Total Net Premium Income</u>
	\$		\$		\$		\$
1950	20,666,290	47.6	16,516,916	38.0	6,236,222	14.4	43,419,428
1951	23,062,724	46.2	19,532,866	39.1	7,355,766	14.7	49,951,356
1952	29,243,848	45.6	23,334,321	36.4	11,507,022	18.0	64,085,191
	<u>72,972,862</u>	<u>46.3</u>	<u>59,384,103</u>	<u>37.7</u>	<u>25,099,010</u>	<u>16.0</u>	<u>157,455,975</u>

(Statement, p. 277)

1957 35,640,841 34.7 30,642,868 29.8 36,396,151 35.5 102,679,860

The figures in the Director's Statement indicate that in the years 1950-52 Board companies wrote about 47 per cent of the total automobile insurance premiums in Ontario, Conference companies about 38 per cent, and independent companies about 16 per cent. They also indicate that from 1950 to 1952 the share of the business held by Board companies dropped 2 per cent, and that of Conference companies 1.6 per cent, while that of independent companies increased 3.6 per cent. In each year, in terms of dollars, the business of all three groups had increased.

In 1957 the same trend is apparent as in the provinces east of Ontario. In terms of dollars we see that the business of all three groups had increased, but as percentage shares of the market, the business of Board companies had dropped from 45.6 per cent in 1952 to about 34.7 per cent in 1957 and that of Conference companies from 36.4 per cent in 1952 to about 29.8 per cent in 1957, while that of independent companies had risen from 18 per cent in 1952 to about 35.5 per cent in 1957. In the latter year independent companies wrote

about \$755,310 more in premiums than the Board companies.

Our information concerning continuity of Board membership shows very little change between 1952 and 1958 in Ontario, as in Quebec. It appears that four companies classified as Board companies in 1952 were independent in 1958. Two of these companies retired from the automobile insurance field in 1958. The other two had net written premiums in 1957 of about \$236,785.

7. Manitoba

<u>Net Premium Income</u>							Total Net Premium Income
<u>Year</u>	<u>Board Companies</u>	<u>% of Conference Total</u>	<u>Companies</u>	<u>% of Total</u>	<u>Independent Companies</u>	<u>% of Total</u>	
	\$		\$		\$		\$
1950	3,138,235	60.7	938,939	18.1	1,096,879	21.2	5,174,053
1951	3,496,809	59.0	1,015,188	17.2	1,411,963	23.8	5,923,960
1952	4,341,744	57.5	1,216,579	16.1	1,988,947	26.4	7,547,270
	<u>10,976,788</u>	<u>58.9</u>	<u>3,170,706</u>	<u>17.0</u>	<u>4,497,789</u>	<u>24.1</u>	<u>18,645,283</u>

(Statement, p. 278)

1957 4,445,188 43.6 1,964,574 19.3 3,791,029 37.1 10,200,791

The figures in the Director's Statement indicate that in the years 1950-52 Board companies wrote about 59 per cent of all the automobile insurance premiums in Manitoba, Conference companies about 17 per cent, and independent companies about 24 per cent. They further indicate that the share of the market enjoyed by Board companies and Conference companies declined during the period, while that of independent companies increased about 5 per cent.

Once more we find the same changing picture in 1957 as in other provinces. In terms of dollars the business of all three groups had increased between 1952 and 1957, but as shares of the market, Board company business had dropped from 57.5 per cent to about 43.6 per cent. Conference company business had risen from 16.1 per cent to about 19.3 per cent. Likewise that of independent companies had increased from 26.4 per cent to about 37.1 per cent.

Our information concerning continuity of Board membership indicates that 20 companies which in 1952 were classified as Board members in Manitoba, were independent in 1958, and in 1957 their net premiums written amounted to about \$369,817.

8. Saskatchewan

Year	Board Companies	% of Total	Net Premium Income				% of Total	Sask. Govt. Ins. Office	% of Total	Total Net Premium Income
			Conference Companies	% of Total	Independent Companies	% of Total				
	\$		\$		\$		\$		\$	
1950	416,348	11.8	148,308	4.2	280,620	8.0	2,682,931	76.0	3,528,207	
1951	394,779	10.0	180,676	4.6	325,244	8.2	3,052,305	77.2	3,953,004	
1952	416,148	8.9	194,545	4.2	388,057	8.3	3,679,704	78.6	4,678,454	
	1,227,275	10.1	523,529	4.3	993,921	8.2	9,414,940	77.4	12,159,665	

(Statement, p. 279)

1957	688,754	7.7	6.9	706,465	7.8	6,969,464	77.6	8,984,092
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The Director's figures indicate the dominant position of the Saskatchewan Government Insurance Office in the field of automobile insurance in Saskatchewan during the years 1950-52. This dominance is largely due to the fact that certain coverages of automobile insurance are compulsory in that province, all such compulsory insurance being written by the Government Insurance Office, and amounting to about 60 per cent of all net premiums. However, in addition to compulsory insurance, the Saskatchewan Government Insurance Office sells coverage on a voluntary basis, and in each of the years 1950-52 its net premium income from voluntary insurance was substantially greater than that of any of the other groups of companies. Thus in 1950 its net premium income from voluntary insurance accounted for about 14 per cent of total net premium income in the province and in 1952 for approximately 20 per cent.

During these years the Director's figures further indicate that in terms of dollars the total Board company business was about the same in 1952 as in 1950, while that of Conference and independent companies had increased, as had that of the Government Office. Percentage-wise the business of Board companies had dropped from 11.8 per cent in 1950 to 8.9 per cent in 1952, that of Conference companies was 4.2 per cent in both years, that of independent companies had increased slightly, from 8 per cent in 1950 to 8.3 per cent in 1952, and that of the Saskatchewan Government Insurance Office had also increased slightly, from 76 per cent in 1950 to 78.6 per cent in 1952.

In 1957 no substantial change had occurred in the relative position, indicating the continuing dominant position of the Government Insurance Office.

The compulsory insurance scheme removes a large segment of automobile insurance business from the arena of competition, and subjects that segment to a system of governmental regulation of all aspects of the business, including premium rates. In order to indicate the distribution of competitive automobile insurance business in Saskatchewan the Director's Statement contains a table showing the percentage shares of voluntary insurance premiums written in the years 1950-52, as follows:

<u>Year</u>	<u>Board Companies</u> %	<u>Conference Companies</u> %	<u>Independent Companies</u> %	<u>Sask. Govt. Ins. Office</u> %
1950	31.2	11.1	21.1	36.6
1951	25.4	11.6	20.9	42.1
<u>1952</u>	<u>21.2</u>	<u>9.9</u>	<u>19.9</u>	<u>49.0</u>
1950-52	25.3	10.8	20.5	43.4

(Statement, p. 280)

This table shows that the percentage of business on a voluntary basis written by Board companies declined substantially during this period, that of Conference and independent companies slightly, and that of the Saskatchewan Government Insurance Office had increased substantially, until in 1952 it amounted to almost half of all premium income on a voluntary basis.

The situation with respect to insurance written on a voluntary basis shows no great change in 1957. As mentioned early in this chapter, the amount of compulsory premiums written in 1957 was \$5,441,380. If we subtract this figure from the total premiums for the year of \$8,984,092, we get the following distribution of voluntary business for the year:

Year	Board Com- panies	% of Total	Con- ference Com- panies	% of Total	Inde- pendent Com- panies	% of Total	Sask.Govt. Ins.Office	% of Total	Total Net Premium Income
1957	688,754	19.5	619,409	17.5	706,465	19.9	1,528,084	43.1	3,542,712

The only noteworthy changes between the percentages in 1952 and those in 1957 are that the share of Conference companies had increased from 9.9 per cent to about 17.5 per cent, most of the gain being at the expense of the Government Office, whose share had dropped from 49 per cent to about 43.1 per cent.

Our information concerning continuity of Board membership indicates that 7 companies which in 1952 were classified as Board members in Saskatchewan, were independent in 1958, and in 1957 their net premiums written amounted to \$5,282.

9. Alberta

Net Premium Income

Year	Board Companies	% of Total	Conference Companies	% of Total	Independent Companies	% of Total	Total Net Premium Income
	\$		\$		\$		\$
1950	4,828,292	61.3	1,328,834	16.9	1,712,770	21.8	7,869,896
1951	5,585,301	58.7	1,709,325	17.9	2,228,016	23.4	9,522,642
1952	7,769,507	56.7	2,414,661	17.6	3,524,789	25.7	13,708,957
	<u>18,183,100</u>	<u>58.5</u>	<u>5,452,820</u>	<u>17.5</u>	<u>7,465,575</u>	<u>24.0</u>	<u>31,101,495</u>

(Statement, p. 280)

1957	10,282,516	47.4	3,305,927	15.2	8,122,281	37.4	21,710,724
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The figures in the Director's Statement indicate that in the period 1950-52 Board companies sold 58.5 per cent of automobile insurance in Alberta, Conference companies 17.5 per cent and independent companies 24 per cent. They show further that there was some decline in the share of the market held by the Board companies, a very slight increase in the share held by Conference companies, and a more significant rise in the share held by independent companies.

In 1957 the figures reveal the same trend as was observed in all the provinces east of Saskatchewan. In terms of dollars the premiums written by all three groups increased, but the gain recorded by independent companies was much greater than that by the other groups. Percentagewise, the share of the business held by Board companies had dropped from 56.7 per cent in 1950 to about 47.4 per cent in 1957, that of Conference companies from 17.6 to about 15.2 per cent, while that of independent companies had risen from 25.7 per cent to about 37.4 per cent.

Our information concerning continuity of Board membership indicates that 7 companies which in 1952 were classified as Board members in Alberta, were independent in 1958, and in 1957 their net premiums written amounted to \$840,380.

10. British Columbia

Net Premium Income

<u>Year</u>	<u>Board Companies</u>	<u>% of Total</u>	<u>Conference Companies</u>	<u>% of Total</u>	<u>Independent Companies</u>	<u>% of Total</u>	<u>Total Net Premium Income</u>
	\$		\$		\$		\$
1950	6,189,793	47.8	5,457,214	42.1	1,313,315	10.1	12,960,322
1951	6,659,365	47.9	5,682,935	40.9	1,548,704	11.2	13,891,004
1952	9,105,864	50.2	6,132,465	33.8	2,900,539	16.0	18,138,868
	<u>21,955,022</u>	<u>48.8</u>	<u>17,272,614</u>	<u>38.4</u>	<u>5,762,558</u>	<u>12.8</u>	<u>44,990,194</u>

(Statement, p. 281)

1957	12,514,128	43.4	6,441,505	22.3	9,914,899	34.3	28,870,532
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The figures in the Director's Statement indicate that in the period 1950-52, 48.8 per cent of automobile insurance premiums in British Columbia were written by Board companies, 38.4 per cent by Conference companies, and 12.8 per cent by independent companies. They indicate further that between 1950 and 1952 the shares held by Board and independent companies had increased, while that of Conference companies underwent a substantial decline.

The figures for 1957 indicate that in a much larger market all groups had increased their business in terms of dollars. Percentagewise, the familiar trend toward independent companies is once more in evidence. The share of Board companies had dropped from 50.2 per cent in 1952 to about 43.4 per cent in 1957, and that of Conference companies from 33.8 per cent to about 22.3 per cent, while that of independent companies had risen substantially, from 16 per cent in 1950 to about 34.3 per cent in 1957.

Our information concerning continuity of Board membership indicates that 8 companies, which in 1952 were classified as Board members, were independent in 1958, and that in 1957 their net premiums written amounted to \$525,320.

11. Canada

The record for each of the ten provinces of Canada which has been outlined in this chapter indicates what may be expected when we examine the automobile insurance business done by the several groups of companies in Canada as a whole. The Director's Statement gives the figures for the years 1950-52, as follows:

Net Premium Income*

Year	Board Companies	% of Total	Conference Companies	% of Total	Independent Companies	% of Total	Sask. Govt. Ins. Office	% of Total	Total Net Premium Income
	\$		\$		\$		\$		\$
1950	54,091,953	50.0	31,474,773	29.1	19,843,159	18.4	2,688,943	2.5	108,098,728
1951	60,381,910	48.7	36,253,598	29.2	24,296,450	19.6	3,056,154	2.5	123,988,112
1952	77,093,169	48.6	42,081,550	26.5	35,890,967	22.6	3,688,599	2.3	158,754,285
	191,567,032	49.0	109,809,921	28.1	80,030,576	20.5	9,433,596	2.4	390,841,125

* The foregoing provincial tables contain a minor discrepancy because a few companies did not have their automobile premium income broken down by provinces and such breakdown was not otherwise available. The automobile insurance totals for Canada of such companies are included in this table. Over the three-year period, however, the discrepancy is less than .3 of 1%.

(Statement, p. 282)

In 1957 the position was as follows:

1957	97,817,053	37.1	54,284,586	20.6	104,604,569	39.7	6,969,464	2.6	263,675,672
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The Director's figures indicate that in the years 1950-52 Board companies wrote 49 per cent of the automobile insurance premiums in Canada, Conference companies 28.1 per cent, independent companies 20.5 per cent and the Saskatchewan Government Insurance Office 2.4 per cent. They indicate further that the shares of the market held by Board and Conference companies declined slightly, while that held by independent companies increased significantly.

In 1957 the trend indicated by the Director's figures is shown to have continued. While the business done by all groups had increased in terms of dollars their relative shares of the market had altered considerably. The share held by Board companies had dropped to about 37.1 per cent and that held by Conference companies to about 20.6 per cent, while that held by independent companies had increased to about 39.7 per cent, being greater than the percentage held by Board companies. The share held by the Saskatchewan Government Insurance Office had increased very slightly.

The most significant comparative fact disclosed by the 1957 figures is that whereas in 1952 the business done by Board companies was more than twice as great as that done by independent companies, in 1957 the business done by independent companies had increased so greatly that, in a much larger total market, it exceeded the business done by Board companies.

During the period 1952-58, in all provinces, a number of companies which were classified in 1952 as Board companies, were classified in 1958 as independent. In some provinces, e.g., Prince Edward Island, Nova Scotia and Manitoba, the number of companies which abandoned Board affiliation was substantial, and in a number of provinces the dollar amount of premiums written by such companies appears to be significant. However, the great majority of the business increase recorded by independent companies in this period did not result from change in affiliation. It resulted from very substantial gains by companies that were not Board members either at the beginning or at the end of the period. In particular, a few companies, notably direct writing companies recorded spectacular increases in premiums written.

It must be remembered, in examining this question of relative business gains, that the total amount of premiums written in Canada doubled between 1952 and 1958, being about \$152,000,000 in 1952 and about \$306,000,000 in 1958. Consequently, unless a company succeeded in more than doubling its premium income during this period, its relative share of the total market would not be greater in 1958 than in 1952. Recognizing this fact it is still remarkable to find that one direct writing company, Allstate, which was just entering the Canadian market in 1952, with premiums written of \$6,309, had expanded so rapidly that in 1958 the corresponding figure was \$13,086,430,

being the second highest company total in Canada in that year. Another direct writing company, State Farm, increased its written premiums from \$963,615 in 1952 to \$4,827,090 in 1958, a fivefold increase. A few other independent companies had large and increasing written premiums, one of them, Lloyds, being the only automobile insurer in Canada whose total was greater than that of Allstate in 1958.

CHAPTER XI

APPRAISAL OF THE EVIDENCE

The contents of the Statistical Exhibit or Green Book have been outlined in Chapter VIII. The Commission is in complete agreement with the view that the nature of the automobile insurance business is such that, for the great majority of insurers, detailed statistical information similar to that contained in the Green Book is necessary if they are to have a reasonable chance to carry on their business, on the one hand, with safety to themselves and, on the other, without overcharging some or all of their policyholders. Acceptance of this basic fact of the automobile insurance business, however, does not imply that all the activities of companies or organizations which make use of the material in the Green Book are in the public interest. Some of these activities, as disclosed in the evidence, will be examined in this chapter.

1. Rating Bureaus

In Chapter VIII we have seen that for Board companies throughout Canada the C.U.A., W.C.I.U.A. and B.C.U.A. act as rating bureaus, whose rate tables are binding on Association members, and that the three Conference organizations likewise prepare tables of rates which are described as recommended or basic but not compulsory. Further, the Masten, Hodgins and Read Reports all regard rating bureaus as necessary and desirable in the public interest, though all three Commissions were of the opinion that rating bureaus should be subject to public control of some sort. Similarly, in the United States the weight of opinion is heavily in favour of rating bureaus, whose activities are today generally subject to some degree of regulation or control by State legislation.

The principal arguments advanced in favour of rate fixing by rating bureaus may be stated as follows:

1. They are necessary to prevent insolvency arising from premium cutting, the buying public having a vital interest in the continuing solvency of the insurer. In this respect the interest of the public is very different from that which arises in sales of property or services.
2. In the absence of rate fixing by rating bureaus competition for sales volume leads to a tendency on the part of insurance companies

to quote rates below cost.

3. Competitive conditions lead to price discrimination, lower rates being charged to influential purchasers.

4. Competition between insurers in respect of premium rates, by eliminating the weaker firms, would produce monopoly.

Historically, it is clear that in the early days of casualty insurance on this continent, severe rate cutting followed by the insolvency of companies and losses to policyholders were primarily responsible for the setting up of rating bodies. Thus the above arguments, or some of them, appear to have considerable force in the circumstances then existing. It does not follow, however, that some practices of rating bureaus are necessary in all contexts at present to guarantee the solvency of insurance companies, to eliminate discrimination in premium rates, or to prevent monopoly.

With respect to the insolvency argument we have the Conference companies, many of whom habitually charge rates set at differentials below Board rates and who have been able to continue in business for many years and have not become insolvent. There is no doubt some truth in the argument that the Conference companies operate under the umbrella of Board premium rates and that they have less expense than the Board companies, who share the cost of the statistical research program leading to the establishment of Board rates. The Commission is not convinced that this argument tells the whole story, noting that in all three Conferences there are companies whose rates vary to a greater or lesser extent from the suggested or basic Conference rates. Again we have the independent companies, reference to two of whom is appropriate in this connection. Allstate Insurance Company and State Farm Mutual Automobile Insurance Company, which operate in both the United States and Canada, have been able to develop their own rates, operate independently of rating bureaus, remain solvent, and grow rapidly in this country over a period of several years.

Since most individual companies have not the resources to carry on the statistical research on losses and costs required to enable them to establish premiums adequate to guarantee the continuing solvency of the company and to protect the purchaser of insurance, and since it would constitute a needless waste of resources and duplication of effort for them to do it even if they could, the Commission considers that there is a need for rating bureaus to perform this essential function. On the other hand, there does not seem to be any good reason why a company which can demonstrate conclusively that its loss experience or its expenses have been consistently lower over a period of years than those of the industry as a whole, should not deviate from the rates set or suggested by a rating bureau. Companies

which are able to effect economies and reduce costs should be permitted to pass on the resultant savings to purchasers of insurance in the form of lower premium rates. The experience of Allstate and State Farm indicates that a company that is able to reduce its rates will increase its business, thus widening the public benefit.

There is no evidence before the Commission from which we are able to form an opinion concerning the existence or extent of discrimination in rates as between different purchasers of insurance. We are inclined to think that the increasing share of the total market held by companies not subject to Board rates suggests there has not been a serious problem in recent years arising from unfair discrimination. If there had been a problem of this kind it would seem likely that some aggravation of it would have accompanied the rapid expansion of non-Board business. Should a real problem of unfair discrimination in rates arise it could be provided against by Federal or Provincial legislation or both. Nova Scotia and Ontario already have legislation for this purpose, though that of Ontario has not been proclaimed.

Similarly the Commission has little direct evidence before it concerning the danger of monopoly arising from competitive rates of premium. Some, at least, of the independent companies are providing stiff rate competition for Board companies, and as already stated, many of the Conference companies sell at less than Board rates. Neither of these circumstances appear to have precipitated a rate war, nor do they appear to have brought monopoly in this industry any closer.

2. The Cost Factor in Insurance Rates

In Chapter IX the cost and loss factors used by the Board Associations in setting premium rate levels were explained and the history of the cost factor in use by the Board Associations from 1930 or thereabouts until the 1950's was outlined. It was shown that there was considerable variation in the costs of companies engaged in the automobile insurance business. It was shown that among 15 Board companies the percentage relationship of commissions to net premiums varied from 0.2 per cent to 23.9 per cent in 1950, from 0.3 per cent to 23.1 per cent in 1951, and from 0.2 per cent to 24.2 per cent in 1952; and that commissions as a percentage of expense varied from 1.8 per cent to 66.8 per cent in 1950, from 1.7 per cent to 69.9 per cent in 1951, and from 1.2 per cent to 67.3 per cent in 1952. Of 14 companies writing only automobile insurance in the years 1950-52, the ratio of expense to earned premium income for two or three companies was less than 20 per cent and for only two or three companies was it more than 45 per cent and this at a time when the Board was

using an expense ratio of 47 per cent on private passenger vehicles, 42 per cent on commercial vehicles, and 34.5 per cent on public vehicles. It was shown that the Canadian Underwriters' Association themselves realized that what was a cost to one company might be something else to another; in other words that the use of the various factors of production in automobile insurance, such as advertising, commissions and other sources of expense might well vary from company to company, e.g., one company not paying commissions, another doing very little advertising. It was shown that the C.U.A. realized that some companies were more efficient than others and that competition would favour the more efficient firm at the expense of the less efficient.

It was shown further that many Board companies made no segregation of the expenses for their automobile business (except presumably for loss adjustment expense), for the period 1950-52, the overhead costs of doing the automobile business being mixed up with the overhead costs of doing other kinds of insurance business. Thus it appears that many of the Board companies did not know, or did not know accurately, what their automobile insurance business cost. The situation appears to have been the same in the period 1953 to 1957 for I.A.C.I.C. companies, Schedule "A" to that Conference's brief indicating that certain parts of their expenses, as shown, were calculated on a pro rata basis, namely, the percentage that automobile premiums bore to premiums in all departments.

It was shown further that the Dominion Board Automobile Committee realized that the expense factor was unrealistic.

In addition to the foregoing, which indicates the arbitrary and unreliable character of a cost factor set as a fixed percentage of the premium, examples from the Director's Statement are referred to in Chapter IX which demonstrate that a cost factor so determined produces in all circumstances variations in the amounts paid by different assureds for the expense portion of their premiums exactly proportionate to variations in the total premiums. Similarly, when increasing losses justify an increase dollarwise in the loss factor in the premium, there is an automatic proportionate increase in the cost factor.

Undoubtedly some items in the cost factor, such as premium taxes and agents' commissions (where set as a percentage of premium) do vary directly with the premium. It is probably true also that more hazardous risks, carrying higher premiums, entail more supervision and consideration on the part of management, justifying some increase in the amount included in the premium for expenses. Risks that carry a greater hazard also justify some increase in the amount allowed for profit. On the other hand, the Commission is satisfied on the evidence, particularly the memorandum of June 30, 1952, attached to a circular from the Chairman of the Dominion Board Auto-

mobile Committee, that some items in the cost factor do not rise and fall in direct relation to the loss factor.

Brief reference should be made in this connection to the agent's commission, which constitutes the most important item in the cost factor. It was strongly contended at the hearing that the agent's services increased with the amount of the premium. In other words, where a higher premium is called for, more time and effort on the part of the agent is required, both to sell the policy and to collect the premium, and therefore a higher commission is justified. There is merit in this contention, but there is no evidence to indicate that the extra time and effort required is proportionate to the difference in the premium. Perhaps no reasonably accurate measure of it is feasible.

In connection with the whole question of the cost factor, including the agent's commission, the Commission has noted this important fact. In provinces which have financial responsibility laws, and more particularly in those which have full safety responsibility laws, the arguments for increasing the cost factor in line with the loss factor, have little validity, at least with respect to public liability (bodily injury) and property damage coverage. On this point the memorandum of June 30, 1952, referred to above has this to say:

"The Committee recognizes that in those Provinces in which Safety Responsibility Laws are in force, B.I. and P.D. cover does not have to be 'sold'; it feels, therefore, that a proper remuneration to the agent would be a flat fee to cover his services in forwarding the application form to the Company and the cost of any other routine work concerned. These costs do not vary with the loss experience . . ."

The final conclusion of the Commission is that the use of a cost factor that is a fixed percentage of the premium results in inequitable contribution to the expenses of the company by insureds. It should be pointed out, however, that from the public point of view the situation was considerably improved in 1953 when the theoretical cost factor was reduced from 47 per cent to 37 per cent of the premium. We assume that the method by which this was accomplished resulted in substantial savings to the insuring public, since half of the reduction involved a 5 per cent reduction in the agent's commission, and at least to this extent there was a real reduction in costs. Increases in premium rates would no doubt have been greater in the absence of this fact.

3. Agreement on Premium Rates

The present report (Chapter VIII) summarized the institutional framework and organization and liaison whereby the Board

organizations established their rates and rating programs. It will be recalled that the premium rates promulgated by the Board Associations annually were the minimum rates which could be charged by Board members. In effect this meant that no one would charge any other rate, for Board companies which charged premium rates higher than the minimum rates promulgated would not get business. It will be recalled that in the case of four of the territorial associations their constitutions explicitly state that member companies must obey all by-laws, rules and regulations and rates promulgated and that, in addition to this general requirement, several territorial associations provided an additional rule explicitly stating that all Association rules and rates were mandatory. Again, it will be recalled that prescribed policy forms and rating classifications were explicitly stated to be mandatory in the case of the C.U.A., the W.C.I.U.A., and the B.C.U.A. Thus it would appear that in the Board organizations the minimum premium rates promulgated, and which Board members were obliged to charge under the fear of having sanctions applied against them by the Associations, were fixed and that there was no way of escaping from the charging of them if they were to remain members of the Board Associations in good standing. This set of requirements effectively eliminated competition in respect of premium rates between all Board companies within the respective territories in which they carried on business.

The importance of Board premium rates in the period 1950-52, derived from the detailed information obtained by the Director, is analyzed in the following paragraphs:

On the basis of figures presented in Chapter X, it appears that, at the very least, and upon the most superficial appraisal possible, the rules of the Board organizations eliminated competition in rates from about 49 per cent of the business done in the Dominion of Canada in the years 1950-52 inclusive. It can be shown, however, that the restriction of competition in rates was even more extensive than this if one takes into account, firstly, the provincial picture and, secondly, the extent to which Board rates influenced the rates charged by Conference companies and independent companies.

From the evidence presented in Chapter X it is clear that there was very little automobile insurance sold in Newfoundland in the years 1950-52 which was not sold at rates at the Board level; in short, not only did Board companies write 80 per cent of the business, but Board rates were effective on over 90 per cent.

Similarly, it is clear from Chapter X that very little automobile insurance was sold in Prince Edward Island which was not sold at Board rates in the years 1950-52. In the year 1952 alone Board rates must have been effective on over 95 per cent of the total sales.

In the case of Nova Scotia, it is clear from Chapter X that over 90 per cent of the total automobile insurance business written in the years 1950-52 was written at Board rates.

Similarly, in the case of New Brunswick, it is clear from Chapter X that over 90 per cent of the total automobile insurance business in the years 1950-52 was written at rates which were substantial-ly Board rates.

In the case of Quebec, it is at first glance obvious that 45 per cent of the business in the years 1950-52 was written at Board rates, but this is not the end of the matter, for, as was seen in Chapter V, there was considerable collaboration between the Board companies and the Conference companies in the matter of premium rates. But of the 45 separate rates set by the Eastern Conference for Quebec for a 1953 Ford Mainline Fordor Sedan in 1953 for the three specified coverages described in Chapter VI only 6 rates were the same as the corresponding C.U.A. rates and, although 15 more were less than \$1 lower than the C.U.A. rates, the remainder, or 24, were set at levels varying from \$1 to \$4 below the corresponding C.U.A. rates. Moreover, a considerable number of Conference companies departed from the rates set by the Eastern Conference, particularly on the collision and third party liability coverages. Again, Chapter VII showed that the influence on the independent and semi-independent companies exerted by the Board and Conference rates was considerable.

Yet, the overall impression is that the Quebec market was a fairly competitive one. While the activities of the Board Associations eliminated price competition over 45 per cent of the market and the Conference activities somewhat mitigated it over another 25 per cent, it is clear that, far from controlling the Quebec market, these two groups were losing ground to the independent companies as far as market shares were concerned. This may be taken as an indication of effective and increasing competition based, at least in part, on price.

In the case of Ontario, it would appear at first glance that only 46 per cent of the business done in the years 1950-52 was written at Board rates. It must be recalled, however, that in Ontario there was particularly close collaboration between the C.U.A. and the I.A.C.I.C. in the matter of rates (see Chapter V, section 1). In Chapter VI it was shown that of the 90 separate rates charged by the Conference on the coverage there described, 66 rates were identical with the corresponding rates of the C.U.A., 22 were \$1 lower and 2 were \$2 lower. Again, the adherence to these Conference rates shown by the Conference members was particularly high. Of the 33 Conference members writing automobile insurance in Ontario, 27 used the Conference rates given in the Director's Statement for third party liability, with some exceptions; and of the 30 Conference rates for third party liability, 6 were the same as the corresponding C.U.A. rates, and the

remainder, or 24, were only \$1 lower. For the collision coverage 16 of the Conference members used Conference rates, these rates being identical with the corresponding C.U.A. rates. For the fire and theft coverage, 22 of the member companies used Conference rates in all territories, these rates again being identical with the corresponding rates of the C.U.A. Other member companies used Conference rates in some territories, but not in others. Furthermore, it was shown in Chapter VII that some of the independent companies charged Board rates.

Although it is impossible to state the exact share of the market which was supplied at Board rates, it is clear that it was much higher than the 46 per cent figure which represents the share of the total market enjoyed by the Board companies. The activities of the C.U.A. and the Eastern Conference in Ontario must be adjudged to have effected a substantial lessening of competition in the matter of premium rates. The growth in importance of sales by independent companies may be taken as an indication that some of these companies were offering price competition of increasing effectiveness.

Although there was collaboration between the Board and Conference companies in Manitoba in the matter of premium rates, this collaboration did not result in as great a degree of similarity of rates as was the case in Ontario. Of the total of 45 separate Conference rates shown in the Director's Statement for the three specified coverages for 1953 on a 1953 Ford Mainline Fordor Sedan, only 7 were the same as the W.C.I.U.A. rates, 5 were 25 cents higher and 10 were 25 cents lower, but the remainder varied from \$1 to \$4 below W.C.I.U.A. rates. Furthermore the Director's Statement does not present any evidence on the degree of adherence among Conference companies to the rates agreed on at Conference meetings. As was shown earlier in Chapter VII, some independent companies had rates which were the same, or substantially the same, as Board or Conference rates, as the case might be. Thus, although the proportion of the total business which was actually done at Board rates in 1950-52 was greater than the 59 per cent figure, given in the table for Manitoba in Chapter X, as the share of the market enjoyed by the Board companies, it is impossible to state accurately the extent of the influence of these Board rates. It would appear that, despite the collaboration of the two groups, competition in respect of premium rates was not restrained to nearly the same extent as in Ontario.

It will be recalled from Chapter VI that in Saskatchewan the Board premium rates and the Conference premium rates for 1953 for a 1953 Ford Mainline Fordor Sedan were identical in both territories. The Board and Conference companies together, however, sold only some 36.1 per cent of the total voluntary automobile insurance sold in the province in the years 1950-52. There was, furthermore, a large number of companies writing automobile insurance in

Saskatchewan, the volume written by each company being relatively small.

It seems reasonable to conclude that there were ample competitive opportunities for purchasers of voluntary insurance in the Province of Saskatchewan in the period under discussion, despite the collaborative efforts of the W.C.I.U.A. and the Western Conference and the identity of their rates.

In the case of Alberta, it will be recalled from Chapter V that there was considerable collaboration between the W.C.I.U.A. and the Western Conference in the matter of establishing premium rates. In Chapter VI it was pointed out that of the 60 separate rates charged by the Western Conference for the three types of coverage for a 1953 Ford Mainline Fordor Sedan in the year 1953, 22 rates were identical with the corresponding rates of the W.C.I.U.A., that an additional 10 Conference rates were lower than the W.C.I.U.A. rates by less than \$1, and that the remainder differed from the W.C.I.U.A. rates by amounts ranging from \$1 to \$7. Although no material was presented in the Director's Statement on the degree of adherence to these rates by the member companies of the Western Conference, it is clear that the proportion of the total sales of automobile insurance in Alberta which were effected at Board rates was higher than the 58.5 per cent figure given in the table in Chapter X for the years 1950-52, and that to this extent competition in price was reduced. It is also true that some of the independent companies charged rates which were the same or substantially the same as the Board rates or the Conference rates, as the case may be.

It would appear from the foregoing that in respect of restriction of competition in premium rates, Alberta occupies a position between Ontario and Manitoba, restriction having proceeded further than in the latter, but not so far as in the former. The shares of the market held by the Board and Conference companies in Alberta and in Manitoba were virtually the same (76 per cent in Alberta, 75.9 per cent in Manitoba) as compared with 84 per cent in Ontario. But the ratio of identical rates was higher in Alberta (22 out of 60) than in Manitoba (7 out of 45), although the proportion of Conference rates which were within \$1 of the Board rates was higher in Manitoba (10 out of 45 as compared with 10 out of 60 for Alberta). In Ontario, however, there were 66 identical rates out of a total of 90.

With regard to British Columbia, it was shown in Chapter V that there was collaboration between the B.C.U.A. and the B.C. Conference in the matter of premium rates, and that the Conference generally established its rates with reference to and at differentials from the Board premium rates. In Chapter VI it was shown that of the 60 separate rates established by the B.C. Conference for specified coverages for a 1953 Ford Mainline Fordor Sedan in 1953, 46 rates

were identical with the corresponding B.C.U.A. rates, 8 were \$1 lower, and 6 were \$2 lower. There seems little doubt that the collaboration between the two bodies in conjunction with the very large share of the market held by the two organizations substantially reduced the price competition on automobile insurance available to the automobile owners of the Province of British Columbia. It will be recalled, too, from Chapter VII that some of the independent companies charged rates which were the same or substantially the same as Board or Conference rates, as the case might be, thus further reducing effective price competition. Although no material was given in the Director's Statement on the degree of adherence to the Conference rates by its members, it seems reasonable to suppose that the degree of restriction of rate competition in British Columbia was about the same as that in Ontario, if not greater.

In short, it would appear that the rates promulgated by the Board Associations ruled the market in the Atlantic Provinces, were of preponderant influence in British Columbia and Ontario, and of lesser importance in Alberta and Manitoba. In Saskatchewan and Quebec there was a substantial degree of rate competition.

Again, it was shown in Chapter V that the correspondence of rates and the similarity of rates between the Board and Conference organizations was not a matter of chance, nor was it simply the result of Conference firms learning through the ordinary course of everyday business that the Board companies were charging certain rates for certain coverages. The transmission of information on rates from the Board to the Conference organization was, in many instances, an organized matter, and even when not organized formally, was carried on to such an extent that each group was fully apprised of the rate changes and rate levels which the other organization was planning on charging through the coming year. It was shown in Chapter V that the Conference rates were generally set as a result of conscious price leadership by the Board organizations and that the rates recommended by the Conference organizations were set at differentials below the Board rates.

Within the Conference organizations there does not appear to have been actual promulgation of rates, although rates were adopted by Conference meetings. Certainly no organization existed whereby the rates charged by member companies could be policed. Nor was there any provision for sanctions against companies that did not abide by those rates. The rates agreed on by the Conference organizations were adhered to to an extent which is known in some areas and unknown in others; the extent is explicitly spelled out for Quebec and Ontario, but not for any other province or territory.

Even in the period 1950-52 it must not be thought that the Board organizations were in a position to set rates at whatever level

they might choose, without regard to competitive or other factors. If Board rates were set too high there was always the prospect that Conference companies would increase the differential between their rates and Board rates and thereby gain a larger share of the market. There was also the trend, clearly shown in this period, toward independent companies as against Board companies. Competition from this source was a deterrent against unreasonable Board rate increases. Again, public complaints against rising premiums and the fear of possible compulsory insurance under government auspices, must have been a cause of some concern to Board organizations when setting rates.

In the years since 1952 the trend of business away from Board companies to independent companies has carried on, until, as we saw, in 1957 independent companies wrote more business than did Board companies. We also saw that in some provinces a significant number of companies gave up Board affiliation. Under these circumstances the Commission is convinced that decreasing percentages of premiums have been written at Board rates, though we have no detailed direct evidence of the extent of the change. Our conclusion, based on the information set out in Chapter X for the year 1957, as compared with the previous period 1950-52, is that rate competition was much more widespread and effective in the later year than in the earlier period. In our view this is in the public interest. However, it must be remembered that Board rates are still mandatory for Board members, and no doubt still have some influence on Conference rates and on the rates charged by some independent companies.

4. Agents' Remuneration and Agreement on Fixed Rates of Commission

An inquiry into all phases of the automobile insurance industry would include an examination of methods of remuneration of agents, and in particular of the method which predominates in this country, viz., by a commission consisting of a percentage of the gross premium on the policy. However, this inquiry is concerned only with conditions or practices which are related to monopolistic situations or restraint of trade. There is nothing inherently monopolistic or trade restraining about the commission method of paying for services. On the other hand, if the commission method of payment is used to support practices which may come within the purview of the Combines Investigation Act, it calls for some consideration.

The commission method of payment is employed by the vast majority of automobile insurance companies in Canada, as well as in the United States. Generally it appears to have been found satisfactory to both companies and agents, though as we saw in Chapter III some friction has developed on occasions in recent years between

Board organizations and agents' organizations. Some few companies in Canada sell their policies through their own employees and do not make use of independent agents. Also, a few companies have a contingency commission system for a particular class or classes of agents, by which is meant a commission that depends in whole or in part on profits from business arising through that agency.

It will be recalled that Chapter III showed the Board organizations to have established certain maximum rates of commission which could not be exceeded by member companies. It was shown that over a period of years the Board Associations had acted to reduce the commission rates which were to be allowed by member companies and that in the period since 1949 the rates of commission have been substantially identical in all territories except Newfoundland. It was also shown in Chapter III that prior to 1948 the regulation of commissions was by no means universal, for in the so-called "excepted" cities commission rates were negotiated between individual agencies and the companies for whom they worked, and that prior to 1948 the general agent received overriding commissions on all his business, both direct and indirect. It was shown that prior to 1948 agents' commissions in some parts of the country ranged from 25 per cent to as high as $32\frac{1}{2}$ per cent of the premium. In 1948, however, the so-called "excepted" cities were abolished by the Dominion Board and rates of commission on direct business were reduced. Reductions in commissions were put into effect in the Province of Quebec in 1950 on private passenger vehicles; and on April 1, 1953, commissions were reduced again. It appears that since April 1, 1953, the rates of the Board companies have been 15 per cent on private passenger business, 15 per cent on commercial vehicles, and $7\frac{1}{2}$ per cent on inter-urban transport and risks rated in the public automobile section of the manual. On January 1, 1959, the C.U.A. abolished overriding commissions on sub-agency business. Thus, the Board organizations have set commissions on a percentage basis and by their decisions over a period of eleven years have reduced the percentage payable to insurance agents writing automobile insurance.

The Conference organizations also were interested in the matter of commissions. It will be recalled from Chapter IV that there was evidence that the I.A.C.I.C. had agreements going back at least to 1947 and extending to 1953 regarding maximum commissions payable to producing agents. Apparently there were exceptions, however, certain companies declining to agree to these set rates of commission, and, so far as is known, there was no machinery for the investigation of the rates of commission paid nor any provisions for sanctions against companies which did not adhere to the maximum rates. The information given on the range of commission rates paid in Ontario and Quebec indicates that the agreements were not observed strictly, although there was a very considerable degree of respect paid to the $17\frac{1}{2}$ per cent maximum agreed on in 1953, about 85 per cent of

the member companies paying no more than that on direct business. For more recent years, the only evidence we have is that agents' commissions have not been discussed at all in the Eastern Conference since 1953. In the case of the Western Canada Independent Automobile Conference it is indicated that there was agreement among the Conference companies in that territory for certain maximum rates of commission, but the evidence indicates, further, that there was a considerable fraction of the companies which exceeded the maxima agreed upon.

No conclusive evidence is available to show that the I.A.I.C.B.C. had any effective agreement on maximum commissions.

The advantages of the commission system of payment, both to the companies and to the agents, are obvious and need not be described here. However, in view of the actions taken by Board organizations in respect of agents' commissions, as mentioned above, we deem it necessary to make brief reference to certain drawbacks said to attach to the system:

1. It is argued that as poor risks carry higher premiums and higher premiums mean larger commissions, the percentage method encourages agents to sell to poor risks. If a large proportion of poor risks are written, the ensuing higher loss experience will lead to higher premium rates for all, which will be detrimental to the public.

The Director's Statement quotes views expressed by Mr. Justice Masten in his report in 1919, and by two American insurance officials, whose opinion are entitled to great respect, all of which support this argument. No further evidence was given at the hearing.

The Commission has formed the opinion that while there is, in the percentage method, some tendency to promote the sale by the agent of poor risks, the incidence of such tendency is not likely to be as great as some persons fear. In our view, no agent could successfully persist in such a course for very long, since it would probably lead to a bad loss record and unwillingness on the part of any company to engage or continue his services.

2. Another alleged disadvantage of the percentage method of paying commissions is that agents are thereby encouraged to sell policies of companies which charge the highest premium rates or which pay the highest percentage in commissions. The Commission considers that the temptation to sell more expensive policies certainly exists, but must be greatly tempered by such considerations as the greater difficulty of selling higher priced policies and by the agent's desire to retain the goodwill and patronage of his clients.

The tendency to sell policies of companies which pay the highest percentage in commissions must be very strong, and is not

tempered by any of the above considerations unless the premiums are also higher than on other policies. On the other hand unless the premiums are higher or unless there is a consequential tendency to raise commissions generally it is difficult to see how the public would suffer.

3. A third drawback arises from setting the cost factor at a fixed percentage of the gross premium. This was discussed earlier in this chapter.

4. It is argued that the percentage method tends to pyramid costs. The commission is a percentage of the gross premium and is itself included in the premium. It is said, therefore, that the agent receives a commission on his commission. Likewise he receives a commission on the amount included in the premium for premium taxes. Again, if the premium is increased to provide for an increase in the loss factor, in company overhead, in premium taxes, or in his own commission, he gets his percentage of the increase, though there has been no increase in his effort or service.

The Commission considers that this argument has some force, particularly in a period of rapidly rising premiums. It loses most of its effect if these matters are allowed for in setting the percentage of commission or in adjusting it from time to time.

Turning now to the actions taken by Board organizations, which were described in Chapter III and referred to at the beginning of this section, it is obvious that the abolition of the "excepted" cities in 1948, and the abolition of overriding commissions which was completed by January 1, 1959, have made the agency system much less flexible than formerly. The present system does not allow for variations in the services rendered by agents, compensated for by variations in the commissions paid. In the result it is difficult to see how an agent can continue to employ and supervise sub-agents, or how he can afford to perform extraservices such as the writing up of policies, since he receives no remuneration in either case for so doing. It appears likely that if the new rules are fully applied all agencies under Board auspices will perform substantially the same services, essentially the minimum services formerly provided by any agent. In fact, evidence given at the hearing by representative agents indicates that this change is taking place, that sub-agents have been let out and have gone to work directly for the companies, and that more of the underwriting services have been taken over by the companies.

From an economic viewpoint it is desirable that companies should be free to use the factors of production (one of which is the services of insurance agents) in such manner, quantities and qualities as they see fit. There is no good reason why all the companies in the industry, or all those belonging to Board organizations,

should be required to use exactly the same factors of production in precisely the same proportions in producing insurance policies or services. It is fairly certain that, given freedom to make their own demands on the factors of production, various insurance firms will, as they did in the past, use slightly different combinations of them in their efforts to raise efficiency, reduce costs and maximize profits. But the ability to do so is impaired by rules rigidly fixing the rate of remuneration which may be paid to one class of the factors of production, in this case insurance agents.

At the hearing, fear was expressed on behalf of the agents that by the changes we have been discussing, the traditional position of the independent agent in this country was being radically altered, and that he was being forced into a position similar to that of the agent in England. Counsel for the C.U.A. vehemently denied that any sort of conspiracy to accomplish such a purpose existed. He contended that the older system of super-agents who performed underwriting services and employed sub-agents, which grew up in the early days of insurance in Canada when there were few centres of population and a vast hinterland, has now become anachronistic. In his submission it was a natural and proper development for general agents and overriding commissions to disappear, and for more of the underwriting to be done in the office of the insurance company that assumes the underwriting risk.

It may be that with the development of this country companies may find it has become more economically efficient to discontinue general agents and others who perform underwriting services, and to do all or most of the underwriting work in their own offices. Certainly there could be no objection to any company or companies, in the exercise of its or their individual judgment, making such changes in administrative arrangements. If such changes produced economies in operation, other companies would be expected to do likewise. What raises some question in the minds of the Commission is that these decisions were not made individually but by joint agreement of the companies in the Board organizations. The result was not brought about by the free play of competitive forces, though such forces may have helped to inspire the move.

In considering the reductions that occurred in commissions, the evidence clearly indicates that various factors, of which the introduction of financial responsibility and safety responsibility laws in a number of provinces was perhaps the most important, had considerably increased the sales and reduced the work per policy of agents. Under these circumstances we would expect a reduction in the commission by the operation of competitive forces. It is not the fact that commissions were reduced, but that the reductions were brought about by joint agreement of the Board companies that raises a question in our minds. Without the intervention of this agreement, the reductions might well have been different in their extent and incidence, and

might not have resulted in a uniform level in all provinces except Newfoundland. It is at least arguable that the public interest would be better served by some flexibility in commissions, with variations related to conditions in different areas or in type of service provided, determined by competitive forces.

An important question which arises in connection with commissions is the extent to which companies should be allowed to compete with each other and to bid for the services of insurance agents. The attitude of the Dominion Board organizations is typified by the submission of the C.U.A. in which the following parts of the report of Mr. Justice Masten (pp. 19 and 12) are quoted with approval:

"In most cases the Agent is the Agent not of one but of several Companies, and it largely depends upon the insurance agent himself as to which of the Companies represented by him secures the more profitable or larger share of his business. As a result, when they are free to do so and not bound by an agreement among themselves, Companies frequently seek to secure business by out-bidding the commission paid to the Agents by their competitors. This competition between the Companies for business again increases the expense, which must ultimately be borne by the premium rate, that is, by the payments made by the insurers. The result is that, owing to the competition between the Companies and the control which Agents have over the business, the expense of insurance is increased to the public, without any chance of its being lowered by competition or other ordinary means, and the public, who have to pay in the end, are unable to lower the expense in any way unless by Legislation. The Companies themselves are powerless to completely deal with the difficulty, unless all Companies can be induced to enter into a binding agreement limiting commissions, because if any strong Companies stand out the result is that they get all the preferred business away from those who had agreed to lower the commissions. So far a general agreement among the Companies has proved to be impossible in Ontario."

(Brief of Canadian Underwriters' Association, p. 27. Underlining supplied by the C.U.A.)

"Whatever justification, however, there may be for a combination of insurance companies to maintain rates, there is undoubtedly the fullest justification for such a combination to limit the expenses of the business. There are obviously two ways of enlarging the turn-over of a company under competitive conditions - one to cut rates,

and the other to increase commissions. From the standpoint of the insuring public, competition in respect to commissions is even more serious than competition in rates. In the event of rate reduction the public obtains at least a temporary benefit, but in the case of increased expenses the public is invariably the loser."

(Brief of Canadian Underwriters' Association, p. 28. Underlining supplied by the C.U.A.)

The attitude of the C.U.A. was further expressed by Mr. Hansard at the hearing as follows:

" . . .

Now, if one company negotiates commissions with one of those agents which are a little higher than the rest, on the basis of getting either more preferred risks or more of the business, what do the others do? It starts a rat race. It starts the companies that happen to be working with that agent to bidding among themselves for the business produced by that agency. The net result, by the facts of life, necessarily has to be that the commissions go up.

Where does the commission come from? It comes out of the rate. If that commission comes out of the rate and what is left is not enough to cover liability and expenses, the loss factor and the cost factor, then solvency requires that the rate go up. The result is that unrestricted competition among companies for the favours of agents through commissions necessarily raises the cost of insurance to the public. That is one of the things that my clients have been zealous to avoid."

(Hearing, pp. 407-08)

A similar argument was also expressed in a letter dated March 16, 1959, from the Royal Liverpool Insurance Group to the Chairman of this Commission.

We can appreciate the desire of insurance companies to avoid anything like a commission rate war. The consequence would be bad for the companies and bad for the public. However, the foregoing argument appears to be based on the assumption that in commission matters, competitive pressure comes from one side only, i.e., from the companies seeking to secure the services of agents. No evidence and no argument were presented in contradiction of this assumption.

tion, but the Commission wonders if, in fact, there is no competition among agents seeking to represent companies. Putting it in another way, do conditions and circumstances not arise in which a company which deems the commissions it is paying to be too high, can negotiate lower rates with its agents, or failing that, can find other agents who will accept lower rates?

A second point merits consideration. It is not the rate of commission alone, but also the efficiency and productivity of the agent which determine whether his services are too costly to the company, or profitable. Thus, where a company receives a superior service from the agent, it can afford to pay him a somewhat higher rate of commission. It is therefore difficult to follow the argument that commission rates must be uniform and subject to arbitrary maxima in order to prevent companies from becoming insolvent.

In the Commission's view some competition in commissions is in the public interest. Subject to adequate provisions being in force to protect the public against non-payment of claims arising from the insolvency of companies, we consider that companies should be free to choose whether to employ the agency system or some other method of selling policies, and also to pay such rates or amounts of commission as they deem advisable. In other words, we are not convinced by the arguments that rates of commission should be fixed and mandatory.

5. Restrictions on the Freedom of Agents and
 Companies to Expand Freely

(a) Restrictions on Agents

In Chapter III there were described certain of the Board organizations' rules which provided that supervising general agents, provincial general agents and city agents might not maintain or have any financial interest in any other agency in the territory under their jurisdiction, either directly or indirectly, and that no local agent might have any financial interest directly or indirectly in agencies of those three types.

A company may justify restricting its supervising and provincial general agents in this way, on the ground that they are really managers in their territory for the company and should not be interested in agencies which act for other companies. But why should such a restriction be imposed by a rule of the Board organization on all member companies? With respect to city agents and local agents, who usually act for a number of companies, this argument has no place.

As agents are independent businessmen maintaining their own offices and employing their own staffs there seems to be no reason why they should be prohibited by joint action from expanding their interests in this way. The Board organizations have taken the view that the rule does not prevent one agent from absorbing another, thus acquiring full control, but it does prevent acquisition of a partial interest. The argument mentioned in Chapter III that the rule prevents an agent from setting up a puppet sub-agency and collecting both direct and overriding commissions has no validity now that overriding commissions have been abolished.

Another rule of the C.U.A. appears to restrict the operation of agents. As found in the amended Constitution and By-Laws of the C.U.A., as submitted to the annual meeting of May 29, 1958, it reads as follows:

"3. Maps and Plans and Fire Rating Material:

Any agent in the Commission Districts of Toronto or Montreal who acts as agent for any insurer, for classes of business falling within the jurisdiction of the Association, operating in the Provinces of Ontario and Quebec which is not a Member of the Association shall not have the right to receive or retain maps and plans or fire rating material."

(Amended Constitution and By-Laws
of the C.U.A., p. 30)

The brief submitted by the C.U.A. stated that maps, plans and rating material are not essential to the carrying on of an agency, many operating without them. It also pointed out that while under the rule the agent has no "right" in the above circumstances to demand them, many agents in fact have them as a matter of concession. The Commission agrees that maps, plans and fire rating material may not be necessary for all agencies, but is of the opinion that they would be very useful in a large local agency, highly desirable if not necessary in a city agency, and necessary in a general agency.

The evidence of Mr. Mylrea and Mr. Tomenson quoted in Chapter III shows that in C.U.A. territories an agent for a Board company may also act for a non-Board company. Further a general agent for a Board company could be a local agent of a non-Board company.

As was stated many times during the hearing, most agencies carry on both fire and automobile insurance.

The above rule concerning maps, plans and fire rating

material was supported by counsel for the C.U.A. on the ground that it was merely to protect them from being used for companies that had not contributed to their cost. It might, however, in our opinion, act as a deterrent to any agent who is otherwise entitled to these things, and who has an opportunity to take on a local agency for a non-Board company.

Any such deterrent effect would tend to prevent the development of the agency to its optimum size and efficiency.

(b) Restrictions on Companies

Another group of restrictions imposed by the Board organizations limits the number of certain classes of agent that may be appointed by any one company. These restrictions are described in Chapter III, Section A 3(a). In so far as general agents are concerned the submission of the C.U.A in its brief was that they accepted management responsibilities for their companies and that it would be a contradiction in terms to say that one insurer could have two or more people in "entire charge" in any given area. This contention appears to be eminently sensible, so much so that no Association rule on the point seems necessary. No other reason for the restriction was advanced.

The C.U.A. rule that a city agent might be located only in the commission districts of Toronto and Montreal, and that members might not appoint more than two city agents in the commission district of Toronto, nor more than one city agent in the commission district of Montreal, is not subject to the same reasoning.

In connection with this rule, a statement in the C.U.A. brief is pertinent:

"Apart from the above [rules as to general agents], there are no 'restrictions relating to the appointment of agents' in the automobile field. All agents in one territory receive the same scale of commissions, and thus the need to set up categories does not exist."

(Brief of Canadian Underwriters'
Association, p. 29)

If this statement means that the above rule and another dealing with transfers of city agencies are no longer operative, it is unnecessary to discuss them further, except to say that as contained in the C.U.A. rules, in our opinion they are restrictive of competition.

Another possible restriction on the operations of companies is the requirement that the appointment of general agents and city agents have to be approved by the appropriate territorial association. This requirement may be intended to relate only to the rules fixing the location and numbers of such agents, but on its face it would appear capable of being used to limit the expansion of a company's agency force.

Another restriction found in the C.U.A. and W.C.I.U.A. is the rule specifying that the head office of a member company may be located only in a particular city or cities. In the W.C.I.U.A. a similar rule was stated to apply to branch offices. The Commission has heard no explanation of these rules, which appear to limit a member company's power to organize its business as it may see fit.

6. Restriction of Business to Board Members

The first rules to be mentioned under this heading are known as the "non-intercourse" and "separation" rules, which were explained in Chapter III. Since by 1953 these rules had been reduced very much in application they can be dealt with briefly. A non-intercourse rule still applied in the Maritimes to local agents, being more effective in New Brunswick than in other Maritime Provinces. It still applied to supervising and provincial general agents, except in C.U.A. territories and Newfoundland. That is all.

Where such rules are in effect they tend to make it more difficult for non-members of Board organizations to do business, by denying to them the services of agents who act for Board companies. Conversely, they tend to restrict the business of Board company agents by prohibiting them from acting as agents for non-Board companies.

Two further rules of this type require consideration, viz., the rules against ceding to or assuming from a non-Board company any re-insurance business. Rules to this effect are found in most of the Board organizations. Clearly such rules are intended to keep re-insurance business of Board companies within the family and to avoid dealing with non-Board companies in re-insurance matters.

Any company has the right to accept or refuse re-insurance from any other company and to select companies to which it is willing to cede re-insurance. But once again, when these decisions are made by rule arising out of joint action, and are binding on all the members of organizations which enjoy a substantial portion of the automobile insurance business, some question arises. They have a tendency to make the business of non-Board companies more difficult by limiting

the re-insurance facilities open to them.

The Commission doubts that any of these business-directing rules seriously affect the operations of non-Board companies in practice. We have seen that "separation" and "non-intercourse" rules have largely disappeared. We have no direct evidence concerning the actual effects of the re-insurance rules, but the existence of a substantial number of non-Board companies, both Conference and independent, together with a growing list of re-insurance companies classed as independent, suggest that non-Board companies have little difficulty in handling their re-insurance requirements.

7. The End of the Dominion Board

Counsel for the C.U.A. stated at the hearing that the Dominion Board of Insurance Underwriters no longer existed and that any function formerly exercised by the Dominion Board was now a function of the Canadian Underwriters' Association (Hearing, p. 68).

No further information was furnished concerning the above change. The Commission has assumed therefore that while the change no doubt has entailed some variations in procedure within the Board organizations, no changes have resulted which affect the merits of any of the matters considered in this report.

CHAPTER XII

RECOMMENDATIONS

Much of the detailed information compiled by the Director was limited to the period 1950-52. Further information obtained by the Commission, with particular reference to the year 1957, indicates that the share of the total automobile insurance business held by members of Board Association, which had been shown to be declining between 1950 and 1952, had undergone a further substantial decline. Nevertheless, in 1957 Board companies still held over 37 per cent of the business, and Board actions in respect of such matters as premium rates and commission rates still influenced very materially the rates charged and paid by Conference companies and by some independent companies. In the opinion of the Commission the portion of the market affected by decisions of Board organizations, throughout the period covered by the inquiry, at least down to and including 1957, has been sufficiently large that joint actions by these organizations and their members, of the kinds described in this report, have had a substantial effect on the degree of competition in the automobile insurance business.

Some of the rules, methods and activities of Board organizations and companies have features which might, in some circumstances, bring them within the kinds of action defined by the Combines Investigation Act or Section 411 of the Criminal Code, and this has raised in our minds the distinct possibility that they might be held to infringe upon the law.

The first of these matters to which we would call attention is the agreement in Board organizations for uniform minimum premium rates, which in effect are fixed rates binding on the member companies of the respective territorial associations that adopt them. In nearly all the states in the United States and in one province of Canada, Nova Scotia, this question has been the subject of legislation. While the legislation varies in some respects in different jurisdictions, the general approach may be described as follows:

Rating bureaus are required to file their schedules of rates with the Department of Insurance for review before becoming effective for their members. Companies not members of rating bureaus must also file their rates. Deviations are usually permitted by a company which is able to show that its loss-cost picture enables it to charge lower rates with safety and non-members of the rating bureau are usually enabled to subscribe for rating material.

The Province of Ontario has legislation authorizing the Superintendent of Insurance similarly to require rates to be filed under oath and to prohibit deviations from the rates filed, but this power has not been used for many years. That province has also passed legislation, which however is not in force because it requires proclamation and has never been proclaimed, authorizing the Superintendent, after due notice and hearing, to order an adjustment of premium rates if found to be inadequate, excessive, unfairly discriminatory or otherwise unreasonable.

Under the Canadian constitution, legislation of this kind is wholly within the jurisdiction of the provinces. As a federal body, appointed to administer specific federal enactments, it is not a function of this Commission to make recommendations to provincial governments for provincial legislation. Further, the Commission has not sufficient information concerning the operation and effect of the legislation now in force in the United States and Canada to enable it to make any recommendations based on knowledge of the relative advantages and disadvantages attaching to it. Therefore, the Commission does not intend to consider any legislative suggestions.

In our opinion the C.U.A. and other territorial associations are in a position to remove any question concerning the validity of their present practices concerning premium rates. We suggest that they should review the situation and should consider in particular:

- (a) Abandoning the compulsory feature of their rate structures, so that members will be able to offer some competition in rates if their loss and cost position justifies it.
- (b) The arbitrary cost factor. In order to arrive at a premium rate some amount must be included for costs and profit. We are not in a position to judge whether the drawbacks attaching to the use of the present cost factor can be satisfactorily removed. In our opinion, if it is deemed necessary to retain the cost factor on something like the present basis, it should be reviewed much more frequently than in the past, so that changing conditions will not find it so much out of line as was the case prior to the 1953 changes. In any event the existence of the cost factor should not prevent a company whose costs are lower than the cost factor indicates from making corresponding reductions in its premium rates.

The Commission makes one further suggestion in connection with rates, viz., that purely as a matter of policy the Associations consider making their rating material available to any non-member company on payment of a fair price. No inference should be drawn from this suggestion that the Associations are under any obligation to do so.

A second matter to which we direct attention is that of fixed maximum commission rates, binding on Association members. We suggest that consideration be given by the Associations to removing the fixed character of commissions along with fixed premium rates. While in some large centres there appears to be a trend toward putting all agents on the same basis, it is not yet true that all companies employ their agents, or at any rate all their agents, on exactly the same basis and expect the same services from them. Variation in kind or quality of service by agents justifies variation in their remuneration.

One other group of restrictive rules remains. In some Associations some of these rules have been abandoned or have less effect than formerly. We suggest that the Associations consider the advisability of abolishing them. We refer to what remains of the "non-intercourse" and "separation" rules, to rules limiting re-insurance to Association members, to those limiting the location and thereby the number of branch offices, and to those limiting the number of agents of certain classifications that may be appointed by a member company.

(Signed) C. R. Smith
Chairman

(Signed) A. S. Whiteley
Member

Ottawa,
May 16, 1960

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